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THE

CASE

OF

Archibald Douglas, *Esq. and his Guardians*, - - Appellants.

AGAINST

His Grace the Duke of Hamilton, *Lord* Douglas Hamilton, *Sir* Hew Dalrymple, *and Others*, - - } Respondents.

To be heard at the Bar of the HOUSE of LORDS, on *Monday*, the 16th of *January*, 1769.

——— cineres, atque offa peremptæ
Insequitur; causas tanti sciat illa furoris.

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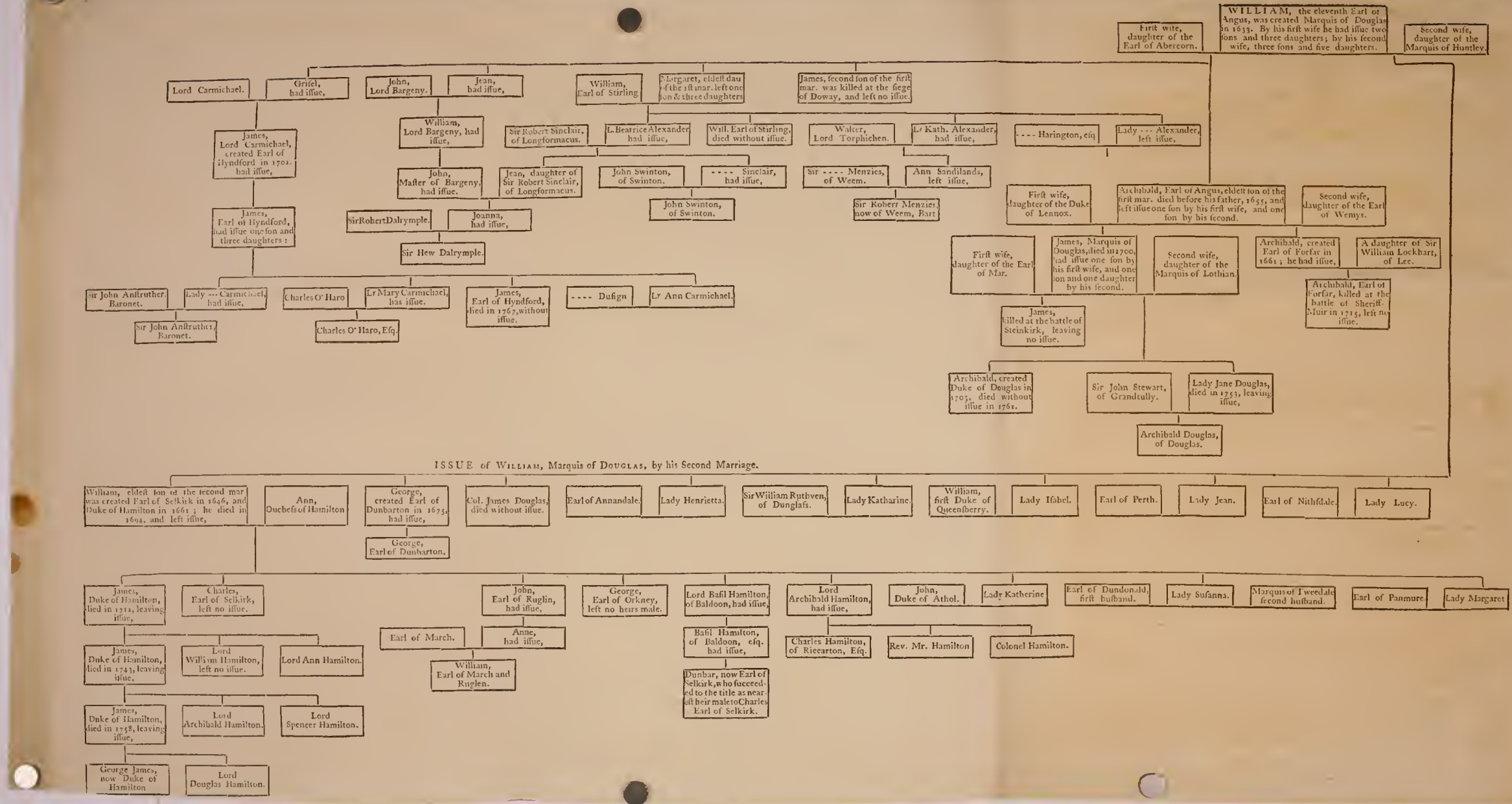
PEDIGREE of the Family of DOUGLAS, from WILLIAM Marquis of DOUGLAS, who died 1660.


First wife, daughter of the Earl of Abercorn.
WILLIAM, the eleventh Earl of Angus, was created Marquis of Douglas in 1633. By his first wife he had issue two sons and three daughters; by his second wife, three sons and five daughters.
Second wife, daughter of the Marquis of Huntley.
Lord Carmichael.
Grisel, had issue,
John, Lord Bargeny.
Jean, had issue,
William, Earl of Stirling
L. Margaret, eldest dau. of the 1st mar. left one son & three daughters
James, second son of the first mar. was killed at the siege of Doway, and left no issue.
James, Lord Carmichael, created Earl of Hyndford in 1701. had issue,
William, Lord Bargeny, had issue,
Sir Robert Sinclair, of Longformacus.
L. Beatrice Alexander had issue,
Will. Earl of Stirling, died without issue.
Walter, Lord Torphichen.
Ly Kath. Alexander, had issue,
---- Harington, esq
Lady --- Alexander, left issue.
James, Earl of Hyndford, had issue one son and three daughters:
John, Master of Bargeny, had issue.
Jean, daughter of Sir Robert Sinclair, of Longformacus.
John Swinton, of Swinton.
---- Sinclair, had issue,
Sir ---- Menzies, of Weem.
Ann Sandilands, left issue,
Sir Robert Menzies, now of Weem, Bart
John Swinton, of Swinton.
Sir Robert Dalrymple.
Joanna, had issue,
Sir Hew Dalrymple.
First wife, daughter of the Duke of Lennox.
Archibald, Earl of Angus, eldest son of the first mar. died before his father, 1655, and left issue one son by his first wife, and one son by his second.
Second wife, daughter of the Earl of Wemys.
Sir John Anstruther, Baronet.
Lady --- Carmichael, had issue,
Charles O' Haro
Ly Mary Carmichael, has issue.
James, Earl of Hyndford, died in 1767, without issue.
---- Dufign
Ly Ann Carmichael.
Sir John Anstruther, Baronet.
Charles O' Haro, Esq.
First wife, daughter of the Earl of Mar.
James, Marquis of Douglas, died in 1700, had issue one son by his first wife, and one son and one daughter by his second.
Second wife, daughter of the Marquis of Lothian.
Archibald, created Earl of Forfar in 1661; he had issue,
A daughter of Sir William Lockhart, of Lee.
James, killed at the battle of Steinkirk, leaving no issue.
Archibald, Earl of Forfar, killed at the battle of Sheriff-Muir in 1715, left no issue.
Archibald, created Duke of Douglas in 1703, died without issue in 1761.
Sir John Stewart, of Grandtully.
Lady Jane Douglas, died in 1753, leaving issue,
Archibald Douglas, of Douglas.
ISSUE of WILLIAM, Marquis of DOUGLAS, by his Second Marriage.
William, eldest son of the second mar. was created Earl of Selkirk in 1646, and Duke of Hamilton in 1661; he died in 1694, and left issue,
Ann, Duchess of Hamilton
George, created Earl of Dunbarton in 1675, had issue,
Col. James Douglas, died without issue.
Earl of Annandale.
Lady Henrietta.
Sir William Ruthven, of Dunglass.
Lady Katharine.
William, first Duke of Queensberry.
Lady Isabel.
Earl of Perth.
Lady Jean.
Earl of Nithsdale.
Lady Lucy.
George, Earl of Dunbarton.
James, Duke of Hamilton, died in 1712, leaving issue,
Charles, Earl of Selkirk, left no issue.
John, Earl of Ruglin, had issue,
George, Earl of Orkney, left no heirs male.
Lord Basil Hamilton, of Baldoon, had issue,
Lord Archibald Hamilton, had issue,
John, Duke of Athol.
Lady Katherine
Earl of Dundonald, first husband.
Lady Susanna.
Marquis of Tweedale second husband.
Earl of Panmure
Lady Margaret
James, Duke of Hamilton, died in 1743, leaving issue,
Lord William Hamilton, left no issue.
Lord Ann Hamilton.
Earl of March.
Anne, had issue,
William, Earl of March and Ruglen.
Basil Hamilton, of Baldoon, esq. had issue,
Dunbar, now Earl of Selkirk, who succeeded to the title as nearest heir male to Charles Earl of Selkirk.
Charles Hamilton, of Riccarton, Esq.
Rev. Mr. Hamilton
Colonel Hamilton.
James, Duke of Hamilton, died in 1758, leaving issue,
Lord Archibald Hamilton.
Lord Spencer Hamilton.
George James, now Duke of Hamilton
Lord Douglas Hamilton.

Archibald Douglas, *of* Douglas, *Eſq. an Infant*, DEFENDER *in the Original Action before the Court of Seſſion in* Scotland, *and her Grace the Dutcheſs Dowager of* Douglas; *his Grace the Duke of* Queenſberry *and Others, his Guardians*, - - - - - - } Appellants.

His Grace the Duke of Hamilton, *Lord* Douglas Hamilton, *and their Guardians*; *Sir* Hugh Dalrymple, *Bart. and Others*; PURSUERS *in ſaid Original Action before the Court of Seſſion*, - - - - - - - } Reſpondents.

The Appellants CASE.

INTRODUCTION.

THE Evidence, in this Extraordinary Caſe, refers to ſuch an endleſs Variety of *Perſons*, *Places*, *Times*, and *Occurrences*, that it runs of Courſe into an inordinate Length.

But, what has contributed moſt to ſwell the Proofs beyond Bounds, is the Shape of the Attack, made upon that *Poſſeſſion of the State*, which the Defender Mr. *Douglas*'s apparent *Situation in Life* gave him, and the *Service*, founded upon *Evidence* of that *Situation*, *adjudged* to him.

Againſt that *Judgment*; againſt the moſt *ſolemn Acknowledgment* of both his *Parents*; againſt the *direct Teſtimony* of two Witneſſes depoſing on Oath to the *Fact* of his *Birth*; againſt a great Variety of Witneſſes depoſing to *Circumſtances* which *neceſſarily infer* his *Birth* as ſworn to; the Purſuers have oppoſed what they call *Probabilities of Impoſture*, *and Cauſes of Suſpicion*. Theſe they have attempted to raiſe, by the Combination of innumerable little Circumſtances: And bringing the laſt into Proof, has occaſioned the monſtrous Waſte of Paper to be ſeen in this Cauſe.

The natural and juſt Anxiety of thoſe, who were charged with the Duty of Tutors to an Orphan-Infant, and who were bound by ſtill ſtronger Ties of Humanity and Juſtice to protect the Condition of a Child committed to their Care, which they ſeriouſly believe to be real and honeſtly acquired; this Anxiety prompted them to be induſtrious in meeting the *Attack*, whatever *Shape* it aſſumed; leaving the *Pertinence* of each Article to future Diſcuſſion.

To ſtate the *Facts* ſimply, without *explaining* upon what Foundations they are affirmed on one Hand, and denied on the other, to be *probable* or *applicable*, would evidently be, to paſs over the whole *Queſtion*, as it now depends between the Parties. It is hoped this will ſerve as an Apology for introducing ſuch *Explanations*, though they will unavoidably draw this Caſe into a diſagreeable Length.

To ſtate the *firſt* intirely by themſelves, and to adduce the *laſt* intirely in the Shape of *Reaſons*, (as is ordinarily done in the Supreme Court when Queſtions of Law are brought before it) ſeems to be impracticable; or at leaſt promiſes to introduce infinite Repetition, and notable Confuſion: This is humbly offered as an Apology for purſuing a Method, which varies a little from the common Courſe.

It has been thought expedient to divide the various Matter, whereby the Purſuers impute *Fraud* to the *Poſſeſſion* Mr. *Douglas* holds of his preſent *Condition*, into ſuch Parts, as ſeemed moſt independent of each other; and, in that Manner, to examine, how far, each taken ſeparately, or all taken together, operate, to prove his preſent *Condition fraudulent*, and to *evict* his preſent *Poſſeſſion*.

Under each of theſe Heads it will occur to ſtate, what the Purſuers have alledged; in what Sort it applies to the Matter in Iſſue; what the Evidence has done in Support of ſuch Allegations; what in Subverſion of them; and, upon the Reſult, to examine what Ground the Purſuers have made to *evict* him from his preſent *Poſſeſſion of State*; or, where that happens to be the Caſe, what additional *Advantage* and *Confirmation* the Truth and Integrity of his preſent Condition derive from the Proof.

After ſo much Induſtry of ſo many able Perſons has been employed upon the Subject, it ſeems impoſſible to add any Thing to the Variety, or Force of the Arguments already uſed: Nor will that be ſo much the Aim at preſent, as to repreſent the Caſe in ſome Order, wherein it may be moſt eaſily read, and comprehended with the leaſt Trouble of referring from one Part to the other.

Perhaps, it will not be thought impertinent to prefix ſome ſhort Account of the *Competition* in the original Suit (wherein the Relation of Blood being acknowledged, the Title of Heir only was diſputed), in order to explain the *real Intereſt* which the preſent Parties have in *this* Conteſt; to ſhew that their very Title to proceed in *this* Action ſprings from the meer Circumſtance of having engaged in *that* Competition. Their whole Object in *this* Proceeding, is to change their *Parties* in *that*, without changing the *Queſtion*; and their whole Hope in the *Competition*, after the Waſte of ſo much Money, and Labour, only to change their Parties, depends upon the Chance of reverſing a Judgment, given in the Court of Seſſion without one diſſenting Voice. And ſuch an Account ſeems the more uſeful, and expedient, becauſe the Purſuers have drawn a Part of their Objections to the *Defender's Poſſeſſion of his State* from the Source of thoſe very Practices, which were uſed to raiſe a Claim for them in the *Competition*.

Part I. Book I. Of the Competition.

It is propoſed therefore, to ſtate the Settlements of the *Douglas* Eſtate in the Year 1699, whereby Lady *Jane* and her Children were called to the *Succeſſion*; to relate the *Practices*, which were uſed to ſet her wrong with her Brother, by falſe Rumours to the Prejudice of her Honour, and her Children's, whereby he was prevailed on to exclude her from his *Succeſſion*; the *Means*, by which thoſe Falſhoods were detected, the Duke undeceived, and the Deeds (obtained by ſuch Frauds) reſcinded; and to give a general Idea of the Ground, upon which the Claims of the Competitors were made, and diſappointed.

Part I. Book II. Of the Conduct of the Purſuers in the Reduction.

The Defender has much to complain alſo, of the ſingular Injuſtice with which this Action has been proſecuted; the Fraud and Violence, with which the Witneſſes have been circumvented, their Teſtimony corrupted, and material Articles of Evidence ſecreted and ſuppreſſed. To manifeſt which, it is propoſed to give a ſuccinct Hiſtory of this Action, from raiſing the Reduction to the preſent Period.

Part II. Book I. The Narrative.

The Object of the preſent Action is to *evict* him from that *Poſſeſſion of his State*, which he has now held for above Twenty Years. It ſeems proper, therefore, in the firſt Place, to draw out, from the whole Evidence on both Sides, ſome general Hiſtory; and in that Manner lay out the *general* Ground, upon which that profuſe Variety of *fraudulent Imputation* has been raiſed by the *Purſuers*. This will ſerve to render the *particular* Ground and Nature of every ſuch *Imputation* more intelligible, and the Diſcuſſion of each more explicit. But the more immediate Uſe of this will be to manifeſt the *Poſſeſſion*, which the Defender has always held *of his State*, and to deliver it from the *Objection*, made by the Purſuers, that the Repute was equivocal, and leſs than perfect, by Means of what they call *Suſpicions* and *Reports to the contrary*. This Part will contain therefore a ſuccinct Account of Lady *Jane's Habit*, Her *Capacity of bearing Children*, Her *Marriage*, Her *Pregnancy*, Her *Delivery*, the *Manner* in which Her Children were *given out* to the World, and *accepted* for Her's, the *Treatment* of the *Parents*, and all thoſe external Marks of *Relation*, which denote a Man's *Condition*, and give it to be obſerved by thoſe, within whoſe Notice He and His Place in Life fall. This will be followed by examining the Nature of the above mentioned Objection, and the Foundations upon which it ſtands.

Part II. Book II. Of the Onus Probandi.

In the next Part it will occur to conſider more particularly, how far all thoſe Circumſtances combined go, in Eſtimation of Law, to cloath him with the *Poſſeſſion* of his *State*, and to warrant the *Adjudication* of it by the *Service*; until Matter ſufficient to *evict* him be alleged, and proved, in *Reduction* of that *Service*. And, for the Sake of ſettling the Ground, upon which the reſt

of

of the Diſpute is to proceed, it may be proper to define, with a View to the Sequel, what Kind of Matter may be competently and ſufficiently alleged to *evict ſuch Poſſeſſion*; and what Kind of Allegation falls ſhort of the Point of *Eviction*; and operates only to the ſubordinate and inferior Purpoſe of raiſing *Suſpicions*, which, if they could be created, will no more warrant the *Eviction* of a Man from *Poſſeſſion of his State*, than from any other *Poſſeſſion* whatever.

Objections to the Defender's Poſſeſſion of his State.

The Allegations of the Purſuers are of many different Sorts; viewed, as they apply more or leſs directly to the Ground of *evicting* the Defender from the *Poſſeſſion of his State*.

1. That he and his Brother were ſtolen from their real Parents.

The firſt Sort conſiſts of thoſe, which undertake to prove, *expreſsly*, what the ſeveral *States* of him and *Sholto* were, before they aſſumed the Condition, in which the Defender now exiſts, and in which his Brother died; namely, that the *firſt* was the Son of *Mignon* a Glaſs-Grinder, the *ſecond* of *Sanry* a common Beggar.

2. That Lady Jane was incapable of bearing Children, and has been traced in Situations which diſprove the Delivery.

The ſecond Sort conſiſts of thoſe, which undertake to demonſtrate, that the Defender and his Brother muſt have been born into *ſome other* Condition, without ſpecifying *what*. This Demonſtration proceeds upon theſe Premiſes; that Lady *Jane* was of an Habit incapable of bearing Children; that, for nine Months before the Birth of the Defender, ſhe was in a Condition notoriouſly free from Pregnancy; that, arriving at *Paris* on the 4th of *July* 1748, ſhe remained at *Godefroi*'s till the 14th of the ſame Month, ſo well remembered in a different Condition, that ſhe could not have been delivered there; that, upon the 18th of the ſame Month, ſhe is remembered at *Michelle*'s, where ſhe did not lye-in, but, on the contrary, wore an Appearance, and uſed a Conduct demonſtrative, that ſhe had not lain-in recently, much leſs within the preceding four Days; upon which they infer, that he muſt have been the Offspring of *ſome other* Body; and, conſequently, that he has aſſumed his preſent Condition by *ſome* Fraud; though hitherto it is untraced, unleſs the Allegations firſt mentioned are verified.

3. That her Accounts of Time, Place, Perſons, and other Accidents of her Delivery, are falſe.

The third Sort of Allegations conſiſts of thoſe, which impeach the Veracity of the Parents, in the Accounts they have given of *Time*, *Place*, *Perſons*, and other *Circumſtances*, attending Lady *Jane*'s Delivery. Under this Head, they offer to prove, from Letters dated of that Day, and the Courſe of the Poſt, that ſhe was not delivered on the 10th of *July* 1748; that no ſuch Perſon exiſted as *La Marre*, whom they have repreſented as the Man-Midwife; that no ſuch Perſon exiſted as *Le Brun*, whom they have repreſented as Landlady of the Houſe where ſhe was brought to-bed. If theſe Propoſitions ſhould all be made out, as they are alledged, they go no Way towards proving, that the preſent Condition of the Defender has been fraudulently aſſumed: They are uſed only to impeach the Veracity and Integrity of his Parents, and to induce a *Suſpicion*, that they *may* have impoſed him upon the Family of *Douglas*. If the preceding Articles, which import to be more direct Allegations of Fraud, fail, theſe circumſtantial Proofs ſink of Courſe along with them.

4. That Sholto was not in their Poſſeſſion, or nurſed by Garnier.

The reſt of their Objections to the Defender's *Poſſeſſion of his State* are remoter ſtill. They infer that *Sholto* was not in the Poſſeſſion of his Parents for the firſt ſixteen Months of his Life; becauſe there is not Evidence enough, in their Opinion, that he was *ſeen*; or *where* he was during that Period. It appears, however, that he *was ſeen* in that Interval; and that *Menilmontant* was mentioned as a Deſignation of the Place, where he was nurſed. It appears alſo, from the *French* Witneſſes, that *La Marre* put out a weakly, twin Child, of a foreign Lady of Rank, at *Hauteborne*, a ſmall Place near *Menilmontant*. Whereupon the Purſuers ſet themſelves to diſprove the Fact, that Nurſe *Garnier* reared *Sholto*, by much the ſame Kind of Argument, as had been uſed before to diſprove the Exiſtence of *La Marre*.

5. That their Conduct was inconſiſtent.

The laſt and wideſt Part of their Caſe conſiſts in Criticiſms upon the *Conduct*, *Expreſſions*, and *Looks* of his Parents, as they ſtand repreſented by the Witneſſes, fifteen or twenty Years afterwards; from which they offer to infer the Purpoſe, and Conſciouſneſs of Fraud.

If the Defender ſhould follow the Order, pointed out by this Attempt to analyſe the Purſuers Caſe, he muſt begin with their moſt direct and concluſive *Averments*, that he is the Son of *Mignon*, and his Brother of *Sanry*. From thence he muſt proceed to their *Averment*, that Lady *Jane* was *incapable*, *unpregnant*, and traced at *Places*, and in a *Condition*, which *exclude*, by unavoidable Inference, the *Poſſibility of a Delivery*. Thirdly, He muſt examine the Grounds, whereupon the Purſuers ſay, Lady *Jane* was not delivered by *La Marre*, at *Le Brun*'s, on the 10th of *July*, 1748, of Twins. Fourthly, He muſt conſider, what Reaſon there is to conclude it falſe, that *Sholto* was in their Poſſeſſion for the firſt ſixteen Months of his Exiſtence; and try, how far the Evidence touching Nurſe *Garnier* goes to confirm, or contradict Sir *John Stewart*, Mrs. *Hewit*, Miſs *Primroſe*, and the other Witneſſes, upon that Subject. And, laſtly, he muſt take ſuch Notice, as occurs, of their Criticiſms upon the Conduct of his Parents.

But, as it may probably happen, that much of the Argument upon each of theſe Articles will ariſe from what has happened in preceding Periods of Time, it has been thought more expedient to attend, as far as that Object ſeems to demand it, to the *Order of Time*; and to examine the Allegations in the following Series.

Part III. Book I. Of Lady Jane's Capacity to conceive.

Proceeding thus, the firſt Thing, which occurs to be examined, is, how far the Purſuers have made good their Allegation, that Lady *Jane* was incapable of conceiving.——The *Evidence* goes to prove, that ſhe was in the Habit of Breeding, and actually miſcarried in *December* 1748; and that ſhe retained the viſible Marks of ſuch Capacity long afterwards. To this the Purſuers oppoſe no *Evidence*; they ſupply the Place of it with *Argument*.

Part III. Book II. Of her Pregnancy.

The next Article ſeems to be their Undertaking to prove, that Lady *Jane* was, for the nine Months preceding the Birth, in a Condition manifeſtly free from Pregnancy. To eſtabliſh this important Propoſition, the Purſuers have condeſcended to make uſe of Evidence. Nine or ten Perſons, after manufacturing the Evidence of five of them in the *Tournelle*, have been examined in this Proceſs. They ſaw Lady *Jane* in an Inn, or a Coach, or in ſome other accidental Manner; and do not remember to have obſerved her Pregnancy. Theſe Witneſſes ſtand oppoſed to about thirty Perſons; moſt of whom lived in Habit, and converſed intimately with her; and deſcribe her Pregnancy, growing from Time to Time, by Tokens, which cannot deceive. All theſe, by ſome Accident, were omitted out of the Citations to the *Tournelle*: They were found, perhaps, upon the previous Examination, what Mr. *D'Anjou*, their *French* Agent, calls *bad Witneſſes*. The Purſuers reply, with unauthoriſed Reproaches to the Witneſſes, and ineffectual Comments upon the Conduct of the Parents.

Their Argument, however, ſoon deſcends upon lower Ground; and they bring ſome Doctors to ſwear, that the Symptoms, depoſed to, *may* attend falſe Pregnancy. However, none of them ever knew ſuch a Caſe; and the only one of them, who profeſſes to have any practical Knowledge in the Matter of Midwifery, confeſſes he ſhould not heſitate, upon ſuch Symptoms, to pronounce the Pregnancy real.

Whereupon, the Argument drops one Stage lower; and alledges, that ſhe *may* have miſcarried; *where* or *when*, the Reader is left to find out.

Hereupon the Defender will think himſelf warranted to inſiſt, that a *real Pregnancy* is eſtabliſhed by full, clear, and unimpeached Teſtimony; and the *Fact of Pregnancy*, thus eſtabliſhed, induces the *Delivery* ſo neceſſarily, that it will be impoſſible to diſprove it by Inference, or by circumſtantial Conjectures: But, the *Fact of Suppoſition* muſt be proved by direct Teſtimony, to impeach a *Poſſeſſion*, guarded by a Title ſo cloſely inferred.

Notwithſtanding the *Pregnancy* of Lady *Jane* is thus eſtabliſhed, the Purſuers undertake to ſhew, there neither was, nor could have been a Delivery; by tracing them from the 4th to the 14th of *July* 1748, at *Godefroi*'s; by finding them again at *Michel*'s on the 18th; and by offering Evidence (more material, as well as more certain, and direct) of the Suppoſition of both the Children.

Part IV. Book I. Of the Alibi at Godefroi's.

The firſt Propoſition in Order of Time is, that they were at *Godefroi*'s from the 4th to the 14th of *July* 1748. The Letters written at the Time; the uniform Converſation of the Parents, and Mrs. *Hewit* ever ſince; her Oath and Sir *John Stewart*'s, all fixing the Delivery to have happened on the 10th, and pointing out another Houſe as the Scene of it, combining with the Proof already mentioned of the Pregnancy, and with all that is to follow in Confirmation of the Reſt of their Story, are on one Side. On the other Side, *Godefroi* and his Wife, renouncing all actual Memory of them; diſclaiming every Cauſe of Knowledge but their Houſhold-Book; refer to that, as the Proof of their having ſtaid at the *Hotel de Chaalons* ten Days: They have delivered an argumentative Depoſition, whereby they combine two Accounts of anonymous Gueſts (apparently diſtinct, one running from the 4th to the 7th, the other from the 9th to the 14th) by this only Circumſtance, which both have in common, that each relates to three Perſons; and thereupon infer, that both relate to Sir *John Stewart*, Lady *Jane*, and Mrs. *Hewit*, becauſe no other Account is found applicable to them, in a Book which manifeſtly does not contain the Accounts of One-Third of their Gueſts.—If the Futility of ſuch Evidence can be demonſtrated better, than by ſtating it, That will be done, by ſhewing its Repugnancy to the firſt Accounts given both by *Godefroi* and his Wife; by ſhewing it to be an After-Thought, adopted by the Purſuers out of mere Neceſſity, when their firſt Allegations had been convicted of Perjury; by ſhewing the Partiality, and Zeal, wherewith the Witneſſes had been inſpired; and by tracing, in their Oaths, the Inſtructions, whereby they had been miſled to make ſuch Inference. How uncertain the Purſuers thought this Proof, and how open to other Explanation, will appear from their ſuppreſſing

preſſing the Book, with equal Fraud and Violence, in the *Tournelle*; and thereby depriving the Defender of an Opportunity to prove a Variety of Objections to the Book, and probably to produce the very Perſons whom the above-mentioned anonymous Accounts really related to. If the Argument really deſerved that ſo much Induſtry ſhould be employed upon it, it was direct Injuſtice to rob the Defender of his Opportunity to anſwer it with Evidence.

Part IV. Book II. Of the taking away Mignon's Child.

The next Article of their poſitive Proof, which preſents itſelf in Order of Time, is indeed a very ſerious one, if it be ſufficiently made out: It promiſes no leſs than direct Evidence, that Mr. *Douglas* is the Son of *Mignon* a Glaſs-grinder; and that he was ſtolen from his Parents by Sir *John* and Lady *Jane* in Perſon. But this whole Suggeſtion will appear, on the ſlighteſt View of the Evidence, to be a Piece of impotent Scurrility, maintained neither by direct, nor by probable Teſtimony; though Practices unheard of in any civilized Country, and particularly obnoxious to the Laws of *France*, were uſed, to beat up for, and inſtruct the Witneſſes, before their Revelations; and, afterwards, Connections were formed with them, Hopes inſpired, Promiſes made, Eagerneſs raiſed, and leading Intimations given, whereby the Story is now become nothing like that which was told at firſt; notwithſtanding all which, there remain irreconcileable Differences between the Perſons who took the Child, and the Parents of the Defender; the Time of taking him, and of the Defender's Appearance; the Age, Size and Complexion of the Child taken, and thoſe of Mr. *Douglas:* And yet the principal Witneſſes have changed the Time once to accommodate; but the reſt of the Evidence reclaims.

Part IV. Book III. Of the taking away Sanry's Child.

Of the ſame Sort is that Allegation, that *Sholto* was the Son of a common Beggar. This Beggar's Child was given away after the Defender's Parents were come to *London*. The Means uſed by thoſe who took him, to find a Child, took up much *more* Time, and *other* Time, than Sir *John* ſpent in *Paris:* The Perſons who took him were notably different from him and his Family: The Child alſo differed remarkably from *Sholto* in Age, Strength, Walking, Speaking, and in ſome ſtriking Marks, and peculiar Diſorders; though the principal Witneſſes have been prevailed on to ſuppreſs the latter, upon their Examination in this Proceſs, after having told them to both the Parties. Here alſo may be traced an unfair Communication with the Witneſſes, apprifing them, from Time to Time, of what was diſcovered, that their Story might be accommodated to it; and all this to raiſe a Belief, which is beyond the Power of Evidence to raiſe, that they gave out a ſecond Child, after finding it impoſſible to procure one; and actually ſtole a ſecond Child, after finding it impoſſible to maintain the firſt, or themſelves; only to accumulate new Miſery upon their Circumſtances and Hopes, which were already ruined. The Penſion from the Duke of *Douglas*, their only Maintenance, had been withdrawn the Summer before; and they were compelled Home by Debts and Diſtreſs.

Part IV. Book IV. Of their Situation at Michel's.

If the foregoing Articles of Proof ſhould fail in the Manner expected, the Inference, which the Purſuers draw from the ſuppoſed Appearance made by the Defender's Parents at *Michel*'s, combined with the Length of Time they are ſuppoſed to have remained at *Godefroi*'s, will be already diſappointed; and Nothing which can be ſaid of them at *Michel*'s will ſuſtain the Propoſition contended for, of an abſolute and phyſical Impoſſibility of the Delivery. For the reſt, their Appearance at *Michel*'s falls into the inferior Claſs of Evidence, purely circumſtantial, tending to draw into Queſtion the Veracity of the Defender's Parents and Mrs. *Hewit*. The Articles they rely upon are, that Lady *Jane* appeared free from every Token or Symptom of recent Delivery; in perfect Health; and made, ſome ſay one, ſome two, ſome three Jaunts to the Country, and about the Streets of *Paris*. It will appear, upon looking into the Evidence, that ſhe came to *Michel*'s on the 20th of *July* at ſooneſt; that her Situation, and her being driven out of her lying-in Bed by Bugs were known to that Family; that ſhe lived with Doors and Windows ſhut, to exclude the Air, and was underſtood in the Houſe to have been recently delivered of Twins: That ſhe recovered her Strength and Looks, by ſuch Degrees, as were to be expected; and that they ſollicited the Woman who nurſed Mr. *Douglas* at this Houſe, and who knew her whole Conduct, by every Motive they could think of, to go with them to *Rheims*, where the Delivery, on the 10th, of Twins, and the State of the Childrens Health, were notorious. And the moſt probable Reſult of the uncertain Evidence upon that Subject is, that inſtead of making either one, two, or three Jaunts, ſhe never went out at all, but that theſe ſame Jaunts have been ſuggeſted ſince, or confounded with Mrs. *Hewit*'s going to bring Home the Child from Nurſe; or, it may be, to ſee the other: And it is remarkable, how this Idea comports with the Story which the ſame Witneſſes told before they and their Books were dragged into the *Tournelle*, and had undergone that fraudulent Proceſs, which will be related hereafter. That Objection, which alſo occurs under this Head, That the Appearance of the Child was unlike that of one ſo newly born, will be cleared up by their own Witneſſes.

Upon the Foot of this Diſcuſſion it is expected to reſult, that, after leaving *Godefroi*'s, Lady *Jane* was thirteen or fourteen Days in a ſecond Houſe, before ſhe came to *Michel*'s; and, as far as the Evidence

Evidence ſpeaks materially and diſtinctly upon this Subject, that ſhe wore, before this Time, the genuine Appearance of a Woman about to lie-in; and after, that of one recently delivered. In ſhort, that the Thread of the Hiſtory will connect; and yield a conſiſtent Account, in further Support of the *Poſſeſſion*, which the Defender has *of his State*; inſtead of affording any Means to *evict* it, by imputing Fraud to his Manner of acquiring it.

The reſt of the Evidence, as has been obſerved, is purely *circumſtantial*, maintaining no ſubſtantive Allegation, whereby Fraud is imputed to the Defender's preſent Condition; or whereupon his *Poſſeſſion* is liable to be *evicted*. It tends, however, to draw into Queſtion the Veracity of his Parents, in their Accounts of *Perſons*, *Places*, *Time*, and other *Accidents* of the Delivery. It offers to prove, that ſhe was not delivered by *La Marre*, at *Le Brun*'s, on the 10th. The Name of *Sholto*'s Nurſe, and of her Abode, having been forgotten by the *Engliſh* Witneſſes, till it was accidentally diſcovered in the Courſe of this Inveſtigation, that was not a Topick upon which their Veracity could be queſtioned. It was not the leſs neceſſary, however, to get rid of an Article, which went ſo directly in ſupport of their Veracity; and the Purſuers, accordingly, undertake to prove, that *Garnier* was not the Nurſe of *Sholto*; nay, that *Sholto* was not in their Poſſeſſion for the firſt ſixteen Months of his Life.

Part V. Book I. Evidence of the Delivery.

In order to examine how far they have ſucceeded in this Attempt, it is propoſed to give a general State of the Evidence, which proves the *Delivery*, and all its *Circumſtances*; becauſe *La Marre*, *Le Brun*, the *Defender*, his *Parents*, his *Brother*, and *Nurſe Garnier*, make *Parts* of the ſame *Story*, ſo relative to each other, and ſo combined, that it would involve endleſs Repetition, to ſtate them ſeparately. It is then propoſed to take up the Arguments of the Purſuers, (for here they affect no Proofs) under each ſeveral Head, whereby they impute Falſhood to the Witneſſes of the *Fact* of *Delivery*.

Part V. Book II. Objections to La Marre conſidered.

It ſhall firſt be examined, upon what Foundation they inſiſt, that *La Marre*, who is now ſufficiently traced, did *not practiſe Midwifery*, or did not practiſe it with ſuch *Reputation*, or in ſuch a *Stile*, as to leave it *probable*, that he would be called to aſſiſt Lady *Jane*. It will then be ſeen, what Pretence there is for aſſerting, that *La Marre* (who did practiſe Midwifery with Reputation and acknowledged Skill; who *did*, in the *Summer* 1748, bring to-bed *a Lady of Condition* (who came from beyond Sea, and laſt from *Rheims*) at *Le Brun*'s, *of Twins*, whereof one was *ſtrong* and the other *weak*, and whereof *the laſt* was put out in the *Neighbourhood of Paris*, *under his Care*) was *not* Lady *Jane*'s Man-Midwife; with whom they appear, by ſo many Witneſſes, to have held a Correſpondence. It will then be ſeen, whether the *real* Hiſtory of thoſe four Letters, (which were produced on the Service, and which have ſuffered ſo many injurious Comments upon *all* Occaſions, pertinent and impertinent) goes further to *ſupport*, or *ſubvert* the Story, atteſted by ſo many ſeveral and independent Teſtimonies; and whether that Account of *La Marre*, which was ſo unduly *drawn*, or rather *exeruciated* from Sir *John*, does materially, diſtinctly, and expreſsly vary from the real *La Marre*, Lady *Jane*'s Man-Midwife, and neceſſarily raiſe another Perſon in his Place.

Part V. Book III. Objections to Le Brun conſidered.

It will next be diſcuſſed, whether the *Le Brun* (mentioned by the *French* Witneſſes, as connected with *La Marre*, as Landlady of the Houſe where he brought a foreign Lady to-bed, and named by the *Engliſh* Witneſſes in the ſame Relation to her) is ſo circumvented by thoſe Lines of Evidence, they have tried to draw round her, as to be abſolutely puſhed out of Exiſtence. They look for her in the *Police Books*, where, upon the Face of the Story, it was unlikely to find her. They look for her in the *Capitation Rolls*, where innumerable Circumſtances might have excluded her, and yet where no Man alive can be ſure ſhe is not found. Upon this uncertain Foundation they offer to extinguiſh Mad. *Le Brun*; and by an Argument, which either proves nothing, or convicts all thoſe of Perjury, who have ventured to name ſuch a Woman; particularly Dr. *Gibſon*, who actually brought Women to-bed in the Houſe of a Woman of that Name, in the Year 1745. Whether Madame *Le Brun does* now exiſt, or *why*, if ſhe does, ſhe has *not been produced*, is a Field wherein their Conduct will be diſcuſſed, who prevailed with *François La Marre* to ſuppreſs his Knowledge of her from the Defender; who prevailed with *Gilles* to retract the Account, he had repeatedly and ſolemnly given to both Parties, and to other Perſons of Credit; who prevailed upon *Le Brun* of *St. Germains* to deny the Story ſhe had often told (happily for Juſtice) to no leſs than Eight different Perſons; who brought the Widow *La Marre* into the *Tournelle* to inſult her out of the Declaration, ſhe had given before the *Huiſſier* employed by themſelves.

Part V. Book IV. Objections to Garnier and Sholto conſidered.

The next Article, they undertake to prove, is, that *Nurſe Garnier* (who received from *La Marre*, in the *Summer* 1748, *one* of two *Male Twins*, born of a *foreign Lady of Condition*, and viſited by *two foreign Gentlemen*, *weakly* in Habit, of a *fair Complexion*, dreſſed in *Dentelles d' Angleterre*, and Child-bed Cloaths of a *foreign Faſhion*, and nurſed him till the *ſecond Winter* after)

after) was yet *not* the Nurſe of *Sholto*. This is attempted by inſiſting on ſuch Articles as theſe: That Mrs. *Hewit* ſays the Nurſe, when ſhe came to take *Sholto* Home, was preſſed by Lady *Jane* to ſtay with her; whereas the Nurſe, at the End of Seventeen Years, ſays the Child was brought to her Houſe: That *Garnier* repreſents her own Child, as if it were ſomewhat older at the Time of receiving this foreign Child, than it would have been in *July*; and, as they were paid for eighteen Months, that ſhe conſequently carries the Time of its being taken away too far forward in the Year 1749, for the Time of *Sholto*'s being carried to *Rheims*. Such Objections, beſides the obvious Confutation they are liable to, have already received an Anſwer from the Purſuers; who think it neceſſary to tax the Witneſſes with Perjury, upon this expreſs Foundation, that the Story bears too great a Reſemblance to the Hiſtory of Lady *Jane*.

Part V. Book VI. Of the Letters wrote on the 10th July 1748.

After this it may be proper to ſet right that Miſapprehenſion of the Courſe of the Poſt, which has led the Purſuers into a laborious Argument, that Letters writ upon the 10th, without mentioning the Delivery, prove that no Delivery happened on the 10th. The Poſt goes away at Eight, which Hour, conſequently, cloſes the Correſpondence of that Day; and the Delivery happened at Four in the Afternoon.

Part VI. Of the Conduct of the Parents.

The laſt Reſort for Objections to the *Poſſeſſion* the Defender holds *of his State*, is to Cavils againſt the *Conduct* of his Parents; inſiſting, at the End of Seventeen Years, that, in certain Articles, it appears different from what might be expected in the preſent Review of their *Circumſtances* and *Situation*. This Sort of Argument ſeems to be extremely hard, againſt Mr. *Douglas*; who muſt be ignorant of what their *Conduct* really was, and of the *Circumſtances*, from whence it ſprung, and whereby it was influenced. Explanations of this Kind, if they be wanted, can only be had from thoſe, who have a perfect Memory of every little Occurrence, and temporary Motive, which governed it. In ſhort, Lady *Jane* ſeems to have been the only Perſon likely to give them ſatisfactorily. This Sort of Argument is ſo fallacious, that no Judgment can be hazarded upon it, without manifeſt Danger of doing Injuſtice; unleſs it were previouſly aſcertained, that every little Article reſpecting their Situation, ſtood as fully in the View and Contemplation of the Judge, as it did in their own at the Time. After which the Difference, which generally prevails between the Tempers, Opinion, and Character, of different Men, muſt be carefully weighed. The whole Ground is too uncertain and doubtful, to be the Ground of a judicial Sentence; therefore it is of little Conſequence, whether the Defender will be able to give ſatisfactory Explanations upon ſuch a Subject. But, in Confidence, that, with all theſe Advantages, the Purſuers have found no Part of this Story defective or obſcure enough, to raiſe even Suſpicions from it, the Defender will offer ſuch Explanations, as ſpring directly from thoſe Circumſtances, which have been preſerved by Accident, and produced in Evidence. He is groſsly deceived, if the *Conduct* of his Parents will appear, in any Inſtance, inconſiſtent with that *Relation*: If, on the contrary, it will not appear ſuch, as could not have been diſſembled in *Fact*; as cannot be *thought* diſſembled, while Faith and Truth are *thought* to exiſt among Men; ſuch a Train of Falſhood—ſo deliberate and conſtant—conſiſting in Acts and Expreſſions of Tenderneſs, ſo frequent, uniform and animated—to Children whom they had no natural Cauſe to love—who preſſed the Weight of their Diſtreſſes ſtill heavier upon them, is merely *impoſſible*; nor can their Conduct be accounted for by any Means, but by allowing them to be, what they undoubtedly were, the *natural Parents*.

The general Nature and Application of the Purſuers Argument.

This is the general State of the *Queſtion*, as it has been *raiſed* by the *Purſuers*. Thus have been introduced the immenſe Volumes of Evidence, brought upon an endleſs Variety of ſmall Circumſtances; which aim to prove not the *Fact* of Fraud, but the *Poſſibility* of it. For Inſtance, the Evidence does not offer to maintain that Mr. *Douglas* and his Brother *actually are* the Children of *Mignon* and *Sanry*, nor that his Parents *actually took away* ſuch Children; but that, within the Compaſs of Poſſibility, they *may be* ſo: And the whole Queſtion upon this Head is, Whether the Imputation be *poſſible*. They inſiſt, upon ſpeculative Arguments, that moſt Women loſe the Capacity of conceiving before they are forty-nine Years old, not that Lady *Jane had* loſt it: That her Miſcarriage in *December* 1748 *might have been* ſome other Diſorder, not that it *was* ſo: That her Pregnancy *might have been* diſſembled, not that it *was* ſo. In tracing their Perſons, the *Godefrois* affect not to remember their Perſons; but they offer to make an *Inference* from their Books, which *might* be true, if their Books were as comprehenſive, as the Form of the Argument requires; but at preſent is no *Inference* at all. The Incidents, which the People at *Michelle*'s ſpeak of, in their *uncertain* and *contradictory Way*, do not uſually happen to lying-in Women: Therefore it *might* be true that ſhe was not recently delivered, if other Evidence had not eſtabliſhed that ſhe *was* ſo. The ſame Idea prevails more remarkably in the reſt of the Caſe, where the Queſtion is not, Whether the Defender ſhall be *evicted* from *his Poſſeſſion*; nor even, Whether his Parents *have ſpoke* Truth; but, Whether the Truths, they have uttered find, *additional Support* or not, from the concurrent Evidence? Thus, having traced a Man-Midwife of the Name of *La Marre* at

at *Paris*, under all the Circumſtances mentioned before, a Doubt is ſtill raiſed, whether *that* affords *additional Proof* of this *Circumſtance*, that *La Marre* was *her Man-Midwife*. So, after finding that *Le Brun* kept a Houſe for Delivery, ſo connected as is ſaid before with *La Marre*, it is *argued* that ſhe *might* be a different Perſon from that pointed out by their Story. The Cavils about their Conduct are not worth a Place even in *this Liſt of Arguments*. Mr. *Douglas* has been encouraged, upon View of the Evidence, to inſiſt, that every *poſitive* Allegation of the Purſuers is not meerly *falſe*, but *impoſſible*. That all and every of them, taken ſingly, or combinedly, are ſo far from tending to *evict his Poſſeſſion*, or *falſify* his Parents in any Circumſtance, that they *confirm* them in every Particular, and form an *additional* Barrier to *his Poſſeſſion of State*. *This* Ground is manifeſtly *advanced*, beyond *any* he was obliged to take; and thoſe, if ſuch there be, who think he is unable to maintain *this* Ground, muſt argue very weakly, if they conclude from thence, that he is unable to maintain *any*. *His Poſſeſſion* wants no *Support*, till ſome Means are found out to *attack* it. The Depoſitions of the Witneſſes to his Birth muſt ſtand for *true*, till ſtronger Evidence convicts them of *Perjury*. The reſt of the Evidence, though much mutilated by Time and Mortality, *ſupport* thoſe Depoſitions. It is difficult to imagine, and totally impoſſible to demonſtrate, (the incumbent *Province* of the *Purſuers*) that he could *ever* have been in any *other* Condition, than *that*, wherein he now appears, and wherein he has appeared ever ſince he exiſted.

PART I. BOOK I.

Of the Competition for the Eſtate of DOUGLAS, and the Hiſtory of the Settlements whereupon the Parties claimed.

CHAP. I.

Of the Eſtate of Angus *and* Douglas *down to the Year* 1694 *incluſively.*

IN the thirteenth Century, the Eſtate of *Angus* paſſed, by Marriage with an only Daughter and Heireſs, to an *Engliſh* Family, *Umphreville*, Lords of *Brodhouſe* and *Reddeſdale*.

In three Generations, it paſſed in the ſame Manner to the Houſe of *Stuart*.

Thomas Stuart, Earl of *Angus*, who lived in the fourteenth Century, left two Daughters, Co-heireſſes of his Earldom, *Margaret* and *Elizabeth*. *Elizabeth* made over her Part of the Inheritance to her Siſter, and the King granted a Charter of the whole Earldom to *Margaret*. 9 April, 1379.

Margaret firſt married with the Earl of *Mar*, on whoſe Death, without Iſſue, ſhe married *William* Earl of *Douglas*, and had Iſſue by him *George*, to whom ſhe reſigned the Earldom of *Angus*, &c. and a Charter proceeded thereupon to him and his Heirs of Body. 1389.

The Houſe of *Douglas* failed in the eldeſt Branch by Forfeiture for Rebellion againſt King *James* the Second. 1455.

The Lordſhip of *Douglas*, Part of the forfeited Eſtate of *Douglas*, was granted by the Crown to *George* Earl of *Angus*, *& Heredibus ſuis*; who thus held the Eſtates of *Angus* and *Douglas* united, in Fee ſimple. 1457.

His lineal Deſcendant, *Archibald* Earl of *Angus* and *Douglas*, married *Margaret*, Daughter of *Henry* the Seventh of *England*, and Widow of *James* the Fourth of *Scotland*. They had Iſſue, a Son, *James*, and a Daughter, *Margaret*, who married *Matthew* Earl of *Lenox*.

To prevent his Eſtate from ſinking in the Family of *Lenox*, Earl *Archibald* obtained upon his own Reſignation a Charter, limiting the Succeſſion to *James* his Son, and his Heirs Male of Body—Remainder to his own Heirs Male whatſoever. 1547.

Soon after, the Eſtate paſſed to *Archibald* Earl of *Angus*, his Nephew, who took under the Remainder in Tail Male.

William Earl of *Angus*, in the Marriage-Settlement of his Son, *William* Lord *Douglas*, covenanted to convey his Earldom and Eſtate to the ſaid *William* Lord *Douglas*, and his Heirs Male of Body.—2. To *James Douglas*, the Earl's Second Son, and his Heirs Male of Body.—3. To *Francis Douglas*, his Third Son, and his Heirs Male of Body.—4. To the Earl's own Heirs Male of Body.—And laſtly, To his Heirs whatſoever, bearing the Surname of *Douglas*, and Arms of the Houſe of *Angus*. 11 July, 1601.

William Lord *Douglas*, eſtabliſhed his Title to the Eſtate by Charter and Feoffment, upon this Marriage-Settlement in Fee Tail, but not reſtrained from diſpoſing. 3 Feb. 1602.

Under this *William* Lord *Douglas*, all Parties to this Cauſe claim. He became Earl of *Angus* in 1616.—He had Iſſue of his firſt Marriage, *Archibald* Lord *Douglas*.—Of his ſecond, *William*, afterwards created Earl of *Selkirk*, who married the Heireſs of the Houſe of *Hamilton*, and became Duke of *Hamilton*.

In the Marriage-Settlement of his Son, *Archibald* Lord *Douglas*, with Lady *Ann Stuart*, Siſter of the Duke of *Lenox*, he covenanted to make over his Eſtate to his ſaid Son, and his Heirs Male of Body.—*Failing whom, to return to the ſaid Earl, and his Heirs Male, and of Tailzie, contained in his Feoffment of the Earldom of Angus, and their Aſſigns whatſoever*. 9 Nov. 1629: 23 May, 1630.

The Settlement afterwards reſerves *the Earl's Life Eſtate*—Power to charge the Eſtate to a certain Extent, and contains Obligation to inſcoff, Prohibition to ſell, or otherwiſe convey, to mortgage, or contract Debt, whereby the Eſtate might be evicted, without the ſpecial Advice and Conſent of the Earl during his Life-time, obtained in Writing.—But the Procuratory of Reſignation does not contain theſe Reſtrictions.

A Charter paſſed on this Procuratory of Reſignation.—But neither the Charter nor the Inſtrument of Seiſin, or of Feoffment, that followed, contain the Reſtrictions and Prohibitions abovementioned, any more than the Procuratory of Reſignation and Obligation to inſcoff. 1631.

17 June, 1633. *William* Earl of *Angus* was created Marquis of *Douglas*, and hereafter *Archibald* Lord *Douglas* took the Title of Earl of *Angus*.——He had Iſſue of the Marriage with Lady *Ann Stuart*, *James*, afterwards Marquis of *Douglas*.

11 June, 1649. On the Death of Lady *Ann* he married *Jane*, Daughter of *David* Lord *Elcho*:—And ſettled on the Heir Male of that Marriage the Baronies of *Bothwell* and *Wandell*;—Remainder to his own Heirs Male and Succeſſors whatſoever.——He had Iſſue of this Marriage *Archibald*, afterwards created Earl of *Forfar*.

January, 1655, *Archibald* Earl of *Angus* died before his Father, leaving *James*, the only Son of his firſt Marriage, who took the Title of Earl of *Angus* during his Grandfather's Life; *Archibald*, the only Son of the ſecond Marriage; and two Daughters.

28 Aug. 1655. The Marquis *William* (who had no greater Intereſt than a Life-Rent) conſidering the prohibitory Clauſe as infringed, took upon him to grant the whole Eſtate *de novo*, with the ſame Limitations, and under the ſame Terms and Conditions, as it had been granted by the Marriage-Settlement of 1629 and 1630.

4 Oct. 1655. Feoffment followed upon this Inſtrument: But the Limitations, and Prohibitions, not having been inſerted in the Procuratory of Reſignation, nor in the Precept of Seiſin or Warrant to infeoff, they were not contained in the Feoffment.——*James* Earl of *Angus* was then a Minor.

Feb. 1660. 1666. 8 Sept. 1668. 9 Oct. 1668. Marquis *William* died; Marquis *James* came of Age, and eſtabliſhed his Title to the Eſtate by Service, as Heir Male to his Father *Archibald* Earl of *Angus*, under the Marriage-Settlement in 1630, and was duly infeoffed.

26 Nov. 1669. 17 Nov. 1671. In Implement of his Father's Marriage-Contract with *Jane*, Daughter of Lord *Elcho*, Marquis *James* conveyed the Baronies of *Bothwell* and *Wandell* to *Archibald* Earl of *Forfar*, his Brother of the half Blood, and his Heir Male of Body, Remainder to his own Heirs Male and Succeſſors.—The Earl of *Forfar* was infeoffed accordingly.

7 Sept. 1670. In 1670 Marquis *James*, in his Marriage-Settlement with Lady *Barbara Erſkin*, Daughter to the Earl of *Mar*, covenanted to reſign his whole Family-Eſtate, and all his Lands and Eſtates whatever, to take a new Grant to himſelf and the Heirs Male of the Marriage——his own Heirs Male of Body——*Archibald* Earl of *Forfar*, and his Heirs Male of Body——*William* Duke of *Hamilton*, and any Son of his (not ſucceeding to the Eſtate and Dukedom of *Hamilton*) whom he the Marquis ſhould name in Writing; and in Default of ſuch Nomination, the remaining Sons of Duke *Hamilton* (not ſucceeding to the Dukedom) ſucceſſively in Order of Birth, and their Heirs Male of Body——his own neareſt Heirs and Aſſigns whatever.——The Inſtrument reſerves Power *to alter the Order of Succeſſion, and diſpoſe of the Eſtate in what Manner the Marquis ſhall judge proper.*

Of this Marriage the Marquis had Iſſue a Son, called *James* Earl of *Angus*, who was killed at the Battle of *Stenkirque*.

13 Dec. 1692. On his ſecond Marriage with Lady *Mary Kerr*, Daughter to the Earl of *Lothian*, he ſettled his Eſtate to himſelf and the Heirs Male of this Marriage, with Remainders as in the former Marriage-Settlement, and with the ſame Power to revoke.

29 Mar. 1694. The Eſtate of *Dudhope* falling to the Crown by Attainder of *John* Viſcount *Dundee*, it was granted to the Marquis of *Douglas* and his Heirs Male of Body——to his other Heirs of Tailzie in the Marquiſate and Eſtate of *Douglas*——to his own Heirs and Aſſigns whatever.

In 1694 the late Duke of *Douglas* was born.

Marquis *James* fell into a Courſe of low Debauchery, keeping Company with the meaneſt People, who made Uſe of every Opportunity to draw from him great Sums of Money and large Grants, till, by his Indolence and Diſſipation, he was involved in great Difficulties:——Whereupon the late Duke of *Queenſberry*, the Earls of *Lothian* and *Annandale*, perſuaded him to execute a Settlement of his Eſtate on his Infant Son, to ſecure that from further Depredation; with Powers to pay his Debts, and clear the Circumſtances of the Family.

24 Sept. 1697. Accordingly by Deed of this Date he conveyed to Lord *Angus*, his Infant Son, and Heirs Male of his Body----Heirs Male of himſelf by his then Wife----his other Heirs Male of Body ---Heirs of Tailzie, to be nominated, and in the Order, and under the Conditions, to be appointed by any Writing under his Hand in his Life, which Writing to be as if therein inſerted---failing ſuch Nomination Heirs Male whatſoever---Heirs and Aſſigns whatſoever, all his Earldom of *Angus*, and all his Places of Pre-eminence, *viz.* the Right of ſitting firſt in Councils, Coronations, and Parliaments; of leading the Front of the King's Armies in War; of carrying the Crown in all Parliaments, and all his Eſtates whatſoever; reſerving his Honours and Rents, and other Profits of Superiorities, *&c.* for Life; and alſo the Life-Rents of the Marchioneſs and Counteſs

Counteſs of *Sutherland*---reſerving alſo Power to borrow Money and ſell Lands, except the Barony of *Douglas*, for Payment of his antecedent Debts---a Proviſion binding the Earl of *Angus*, by his Acceptance thereof, to pay his ſaid Debts---the Marquis bound to pay the growing Intereſt, for which Purpoſe he is to empower Commiſſioners to receive the Rents of all but the *Douglas* Eſtate.

In 1698, Lady *Jane Douglas* was born.

17 Mar. 1698.

Of this Date a Charter of Reſignation under the Great Seal paſſed upon the foreſaid Settlement, and Feoffment was taken thereupon. 24 June, 1698. 5 Aug. 1698.

Soon after, the Marquis executed a Commiſſion reciting the above Settlement of the 14th of *September* 1697, and his Satisfaction that it will tend to relieve him of his Debts and Difficulties that he ſhould put his Eſtate under the Management of his noble and truſty Friends: He conſtitutes *James* Duke of *Queenſberry*, *Archibald* Earl of *Argyle*, *James* Earl of *Morton*, *Robert* Earl of *Lothian*, *William* Earl of *Annandale*, *Archibald* Earl of *Forfar*, Lord *Baſil Hamilton*, *William* Lord *Jedborough*, and Others, his Commiſſioners (the Duke of *Queenſberry*, the Earls of *Lothian* and *Annandale* to be a Quorum) to manage his whole Eſtate, *Dudhope* and all, and to receive his Rents and all Profits; with Power to borrow and raiſe Money for Payment of his Debts, by Mortgage or Sale of all but the Barony of *Douglas*; and Authority to pay current Intereſt out of the growing Rents. He reſerved 12,000 Marks a Year for his own Maintenance. This Commiſſion was for three Years. 12 Aug. 1698.

The Noble Lords the Commiſſioners ſat publicly, recorded their Tranſactions, and left them with the *Douglas* Family as a Memorial of their Conduct.

It appears by the Sederunts of this Year that they continued to employ *Duncan Ronald*, Writer to the Signet, as Writer or Agent, and *Harry Douglas* as Receiver.

CHAP. II.

Of the Settlements made by Marquis James *and the Duke his Son in Favour of Lady* Jane.

THE Marquis, with the Privity of the Noble Commiſſioners, as appears from their ſubſequent Conduct, executed a regular Inſtrument of Nomination, reciting the Power reſerved in 1697; whereby he nominated, failing the Heirs Male of his own Body, the Heir Female of the Body of Lord *Angus* and her Heirs whatſoever of Body; which failing, his own Heir Female, and her Heirs whatſoever of Body; which failing, his Brother of the Half-Blood, the Earl of *Forfar*, and his Heirs Male of Body. Then follows a Repetition of the Limitation contained in the Deed of 1697: And he provides, that the eldeſt Heir Female ſhall, in all Inſtances, exclude Heirs Portioners, and that their Huſbands and Families ſhall bear the Name and Arms of *Douglas*. He likewiſe conveyed the Eſtate of *Dudhope* to the ſame Uſes. And thus he executed, upon more Deliberation, with better Circumſpection, every general Purpoſe he had indicated before.

In the ſame Deed was a Procuratory of Reſignation of his Titles, to be retaken in the ſame Line of Heirs.

By Bond of Proviſion of ſame Date, he gives Lady *Jane* 20,000 Marks; and if his then Son ſhould die without Heirs of Body, he gives her more (which is not filled up in the Deed), as againſt any other Iſſue he might have, with an Obteſtation to his Heirs not to impugn the Gift.

Of the ſame Date he makes his laſt Will, giving the ſame Benefaction, and to the Marchioneſs, the Park at *Dudhope* for Life, under the ſame Obteſtation to his Heirs. By this Inſtrument he appointed his Commiſſioners, together with the Marchioneſs, to be Tutors to his Son and Daughter.

The Earl of *Forfar* and Lord *Baſil Hamilton* were in the Number of the Noble Commiſſioners to whom the Management of the Marquis's Fortune was intruſted; but as they had Views of their own upon his Eſtate, which did not comprehend the Intereſt of the youngeſt Child, Lady *Jane*, they, inſtead of aſſiſting at the general open Meetings of the Commiſſioners, were pleaſed to take Care of the Marquis's Eſtate in a more private Way. *Simpſon* and *Anderſon* were the Inſtruments employed in this Buſineſs.

The Share of Lord *Baſil Hamilton* in this clandeſtine Plan, is collected from the Circumſtances of his never attending the public Meetings of the Noble Commiſſioners, and of his taking Benefit

from a fraudulent Inſtrument, to be mentioned hereafter, wherein he is for the firſt and only Time called to the Succeſſion, contrary to every Deſtination which had been imagined by the Marquis before, or by him or his Son afterwards.

The Earl of *Forfar* was in the Habit of ſotting with the Marquis at an Alehouſe in the Town of *Douglas*, kept by *Simpſon*, an Accomplice in the many Frauds practiſed upon him: And when *Simpſon* was impriſoned in the *Tolbooth*, at the Inſtance of the reſt of the Commiſſioners, for Frauds upon the Marquis of *Douglas*, the Earl of *Forfar* gave him Money, and ſent his Steward to countenance and ſuſtain him; and in Evidence, a Draught is preſerved for 300 Marks, to be paid him by one *Muirhead*.

But inveigling was not the only Means employed by Lord *Forfar*. He had raiſed Proceſs againſt him for no leſs a Sum than 300,000 Marks in the Year 1687, which had been little ſtirred in 1684, 1687, and 1691. In the End of the Year 1698 it was moved again, and at this critical Time, 1699, ſo vigorouſly puſhed as to over-run itſelf, for it was determined againſt the Earl of *Forfar*. That this Proceſs made deep Impreſſion upon the Fears and Anxiety of the Marquis, appears from his Letter to Lord *Annandale* on the 2d of *November* 1699, when the Earl reclaimed againſt the Judgment.

Simpſon is proved to have kept an infamous Houſe, where the Marquis lived in the loweſt Scenes of Debauchery, as appears from the Caſe of *Janet Jack*, who got a Bond from the Marquis, of 50,000 Marks, which was objected to, as granted *ob turpem Adulterii Cauſam*. This ſame *Simpſon* is alſo proved to have obtained fraudulently many beneficial Leaſes from the Marquis, which he was afterwards obliged to reſtore; and to have aſſiſted in perſuading him privately to counteract the public Proceedings of his Commiſſioners.

Anderſon appears to have been a very low, illiterate Fellow, unfit to be employed, and never openly employed, in the *Douglas* Buſineſs; and yet he was the Writer on theſe Occaſions, and was in Uſe to make Part of the Company at *Simpſon*'s.

It appears in a Sederunt of the 31ſt of *May* 1699, that the Commiſſioners were appriſed that ſome foul Play had been uſed by the Knot of Lord *Forfar*'s Aſſociates at *Simpſon*'s; and that *Simpſon* had taken an active Part in counteracting their Management, and procuring Alterations to be made in their Meaſures; in ante-dating Papers; and in promoting indiſcreet Correſpondences.—They determined to call him to the ſevereſt Account, and ordered their ordinary Lawyer to proſecute him; which he did with ſuch Effect as to lodge him in the *Tolbooth* Priſon.

15 Aug. 1699. *Simpſon*, finding it impoſſible to get off otherwiſe, made a full Diſcovery of all the former Tranſactions he could bear in Memory, and was bound to leave *Douglas* altogether, and to give up the Inſtruments which he had drawn from the Marquis, without Conſideration, as his Share of the Plunder.

The Earl of *Forfar*'s ill Practices being now laid open, the Noble Commiſſioners adviſed the Marquis to call up the ſeveral Writings out of his Hands.

2 Oct. 1699. The Marquis accordingly ordered *Henry Douglas* to demand and receive, under general Deſcriptions, a Bond of Tailzie, a Ratification thereof, a Nomination of Tutors, miſtaken for the Nomination of Commiſſioners of the 27th of *June*, and generally all other Writings of the Marquis in his Cuſtody; and if he ſhould refuſe, to proteſt againſt him for Damages; and alſo that the Inſtruments are null for Fraud, being obtained in Sickneſs, by Surpriſe, and with none of his Friends about him.

7 Oct. 1699. They were demanded accordingly: But the Earl denied the Fraud, inſiſted that they were depoſited for his Behoof, and objected, that in reſpect of the Generality of the Order ſigned by the Marquis, he was not bound to deliver them. On which, the Proteſt was made as before directed, and the Earl proteſted in the Contrary; and both took Acts.

The Commiſſioners being adviſed that ſuch Inſtruments could be of no Conſequence, contented themſelves to adviſe the Marquis to declare his Intentions *de novo* accordingly.

23 Oct. 1699. Reciting the Deed of the 14th of *September* 1697, and the Nomination made on the 11th of *March* 1699, he nominated to his Succeſſion again, in preciſely the ſame Form as before, which he declared himſelf to abide by for ever; and he revoked all Writs, Nominations, and Obligements, inconſiſtent with this, and empowered his Commiſſioners to call them in to be avoided. By this Deed, he alſo ſettled the *Dudhope* Eſtate to the ſame Uſes, and undertook to reſign his Titles to be regranted to the ſame Uſes, which was a Sort of Conveyance of Titles formerly practiſed in *Scotland*.

It would have been manifeſtly abſurd to leave ſuch a Man Tutor to the very Infant he had tried to ſtrip of her Expectations; eſpecially, as he was to ſucceed her in the Eſtate: Therefore on the ſame Day, the Marquis ratified his Will, and Nomination of Tutors, which had been made on the 11th of *March*, only ſubſtituting Sir *Charles Kerr* in the Place of the Earl of *Forfar*.

Marquis

Marquis *James* died. 23 Feb. 1700.

Marquis *Archibald*, already in Poſſeſſion of the reſt, was retoured Heir in Special to his Father in *Dudhope*, and infeoffed accordingly. 9 Nov. 1702. 9 May, 1703.

The Marquis was created Duke of *Douglas*. 10 Apr. 1703.

For the Sake of changing the Tenures to the Duke's Advantage, and of obtaining the Mines and other Regalities, the Duke's Tutors reſigned his whole Eſtate to the Queen, to be re-granted, with ſuch Additions, according to the Deed of 1697, and the Nomination thereupon. 18 Feb. 1707.

Charter and Seiſin paſſed accordingly, with Reference to the Deed of 1697, and the ſubſequent Nomination. 22 March, 10 May, 1707.

It appears from what has been ſaid before, that the Duke's Tutors who had been Commiſſioners to the Marquis, had at that Time no preciſe Knowledge of the Deeds which *Simpſon* confeſſed had been inveigled from the Marquis, ; for though they had been demanded, and Proceſs of Exhibition inſtituted, they had not been got up in the Life of the Marquis: And though they now appear to have been regiſtered in the Book of Seſſion, 11th of *December* 1704; and in the Regiſter of Tallies, 22d of *March* 1707; thoſe were voluntary Acts, and not of contentious Juriſdiction, and imply no actual Notice to any Perſon; therefore the Nomination mentioned in the Procuratory of Reſignation by the Tutors, and the ſubſequent Charters, muſt be that of the 11th of *March* and 28th of *October* 1699.

The Earl of *Selkirk* founds his Title on an Inſtrument now produced, which imports to have been written by *Anderſon*, and atteſted by him and *Simpſon* on the 9th of *March* 1699.

The Marquis ſtiling himſelf heritable Proprietor of the Earldom of *Angus*, binds himſelf to convey the ſaid Earldom to Lord *Angus*, and his Heirs Male of Body; which failing, to his own Heirs Male of Body; which failing, to Earl *Forfar*, and his Heirs of Body; which failing, to Lord *Baſil Hamilton*, and his Heirs of Body; with other Remainders of the ſame Limitation to other Sons of *James* Duke of *Hamilton*, and terminating in his own right Heirs, under certain Reſtrictions and Conditions; namely, he binds all his Heirs aforeſaid, to warrant this whole Tailzie, and alſo to bear the Name and Arms of *Douglas*, with a Clauſe of Irritation againſt thoſe who ſhould fail. He provides, that the Inſtrument, though no Reſignation or Infeoffment, ſhould follow, and though remaining with him at his Death, ſhould be as valid as a delivered Evident. He reſerves a Life-Rent in the Whole, without providing for the Intereſt of his Debts, which was by the Deed of 1697, to be paid out of the firſt Rents; and concludes with a Clauſe, by which he binds himſelf and his Foreſaids, never to revoke, alter, innovate, annul, change, or infringe this his Bond of Tailzie and Proviſion. 9 Mar. 1699.

There is a Subſcription on the ſame Inſtrument, which imports a Delivery of it, in the Preſence of one *Haddow* and *Anderſon*. 31 July, 1699.

The Deed is framed with a perfect Ignorance of all his Settlements, even of the Deed of 1697. The Marquis aſſumes the Character, and acts as Proprietor, having no ſuch Property: He impoſed Conditions, under Pain of Irritancy, on all his Heirs, having reſerved nothing by the Deed of 1697, but a Faculty of ſubſtituting. After two expreſs Subſtitutions of Heirs, he has bound himſelf to warrant a Title he had no Power to make. He impugned the Deed of 1697, by reſerving the Whole as a Life-Rent againſt the Creditors, whoſe growing Intereſt the Life-Rent was bound to pay, and by reſerving an unlimited Power of raiſing a Fortune for Lady *Jane*. He delivered it, though it was his declared Purpoſe to keep it. It imports to be a Conveyance in the common Form of conveying an Eſtate, wherein one has an abſolute Property, without Reference to any foregoing Settlement; and conſequently, cannot operate as the Execution of a Power which manifeſtly was not in his Contemplation, for the Inſtrument is repugnant to that wherein the Power is reſerved.

The Confederates had learned, that ſome Inſtrument was executed by Advice of the Lords the Commiſſioners; the Whiſper conveyed that it was a Nomination of Tutors, and ſome confuſed Account, that a Diſpoſition of the Eſtate of *Douglas*, in Prejudice of their ſuppoſed Deed, was inſerted in it: Whereupon the 15th of *June* 1699, (at leaſt that Date was inſerted) they drew from the Marquis a very anomalous Inſtrument, taking this idle and falſe Rumour for its Narrative, and declaring the ſuppoſed Diſpoſition and Tailzie to have been foiſted in without his Knowledge, and by Advantage taken of his Sickneſs, and adhering to that Inſtrument of the 9th of *March*; one Lieutenant *Haddow*, *Simpſon*, and *Anderſon*, were the Witneſſes. 15 June, 1699.

They drew from the Marquis another Inſtrument, which the noble Earl was aſhamed and afraid to produce; and it was found after the Extinction of that Family in his Repoſitories. It contained a Miſrecital of the Deed of the 14th of *September* 1697, and of the Commiſſion of the 27 June, 1699.

12th.

12th of *Auguſt* 1698; and a falſe and infamous Libel upon the Commiſſioners therein named: It annulled the laſt Commiſſion *ab Initio*; it appointed all new Commiſſioners, except the Duke of *Queenſberry* and Lord *Lothian*, Lord *Forfar* and Lord *Baſil Hamilton*; and made the Duke of *Queenſberry*, Duke of *Hamilton*, Earl of *Forfar*, and Lord *Baſil Hamilton*, of the Quorum: The ſame Witneſſes as to the laſt Deed. This Nomination of Commiſſioners was underſtood by *Simpſon*, and perhaps by the Marquis, to be a Nomination of Tutors.

28 June, 1716. 2 July, 1716. The Duke was ſerved Heir to the Eſtates of *Bothwell* and *Wandell*, upon the Death of the laſt Earl of *Forfar*, and was infeoffed accordingly; the Eſtates ſtood limited to Heirs Male, but under no Reſtraints to alienate.

1716. The Draught of a Deed of this Date was found in the Duke's Repoſitories, made upon the Opinion of Sir *Walter Pringle*, whereby he gave his whole Eſtate

1ſt. To his own Heirs Male of Body.

2dly. To his Heirs Female, and their Heirs whatſoever, taking ſolely, and not as Portioners.

3dly. Lady *Jane*, and her Heirs Male of Body.

4thly. Lady *Jane*'s Heirs Female, taking in the ſame Manner as his own.

5thly. The Duke of *Queenſberry* and his Heirs Male.

6thly. Lord *George Douglas*, the Duke of *Queenſberry*'s Brother, and his Heirs Male.

7thly. The Duke of *Queenſberry* his Heirs Female, to ſucceed as his own.

8thly. Lord *George* his Heirs Female, in the ſame Manner.

9thly. His own Heirs Male whatſoever.

10thly. His Heirs general.

D.P.1000.B.F. By Mr. *Archibald Stuart*'s Account it ſhould ſeem that this Inſtrument was executed by the Duke.

15 Mar. 1718. In 1718, the Duke executed a Diſpoſition, containing *Procuratory of Reſignation*, according to the Forms of the Law of *Scotland*, in Favour of his own Heirs of Entail; whom failing to Lady *Jane*, &c. A Nomination and Diſpoſition to Lady *Jane*, appointing her his ſole Executrix—Bond of Proviſion for 30,000 Marks in her Favour.

7 May, 1718. He made her an additional Bond of Proviſion.---A further Nomination and Diſpoſition of Executry in her Favour.

11 June, 1718. 1726. The Duke executed another Diſpoſition of his Eſtate of *Dudhope*, or *Dundee*, to the ſame Heirs called in the Deed 1716. And having made other Purchaſes, he ſettled them, together with his ancient Eſtate, in the ſame Manner.

7 Feb. 1736. In 1736, the Duke gave Lady *Jane* a Bond, reciting that 50,000 Marks were due to her, the Intereſt of which was 138 *l.* 17 *s.* 9⅓ *d.*; and that by the Death of the Marchioneſs her Mother, with whom ſhe lived, it being become inſufficient to maintain her, that he was minded to give her an Addition of 161 *l.* 2 *s.* 2⅔ *d.* making together 300 l. He bound himſelf accordingly, to pay her 300 l. a Year, revocable however as to the laſt Sum of 161 *l.* 2 *s.* 2⅔ *d.*

This was of Courſe delivered to Lady *Jane*.

CHAP. III.

Of the Means which were uſed to ſet Lady Jane *wrong with her Brother, and the Settlements of his Grace's Eſtate obtained in Conſequence thereof.*

HItherto Lady *Jane*'s Fortune was all-proſperous; ſhe ſtood the preſumptive Heireſs of the Houſe of *Douglas*, with a graceful Perſon, excellent Underſtanding, and engaging Manners: Beloved and admired by all, ſhe was moſt peculiarly the Favourite of her Brother, and ſhe regarded him with equal Affection.

D. P. 896. A.B. Lady *Jane* thought that her Brother's private Happineſs and Regard to an illuſtrious Family, which depended upon him for being continued, both required that he ſhould marry; and preſſed him to do ſo by every Conſideration which a Siſter could ſuggeſt.

The Duke, though averſe to Marriage himſelf, was no leſs anxious to perpetuate the Succeſſion in the Houſe of *Douglas*, and offered his Siſter, if ſhe would marry, the largeſt Settlements, no leſs

leſs than 600l. a Year, and the whole *Dudhope* Eſtate, to be ſettled in whatever Way any four Noblemen of *Scotland* would adviſe; allowing the freeſt Choice of any Nobleman or Gentleman; but ſhe could not at that Time be induced to think of it.

The Duke at the ſame Time was a Man of violent Temper, proud, paſſionate, ſuſpicious in Articles which touched his Pride, eaſily irritated and tranſported to great Exceſs: Even his Affection to Lady *Jane* was tempered with Family-Pride and Diſdain of what he thought a Miſ-Alliance.——His Delicacy upon this Subject ſpurred him to a very raſh Action, which proved the Source of his own Unhappineſs, and of all her Misfortunes.

He was obliged upon this Event to live extremely retired, and fell into the moſt undoing Company which a Gentleman can be ſurrounded with; his own Servant and Agents, and others equally mean in Character, who ſought him upon intereſted Inducements, and by Dint of Flattery at once gained a corrupt Confidence, and indiſpoſed him to receive honeſter Information.

The three Perſons who chiefly poſſeſſed the Duke's Confidence, were Mr. *James White*, of *Stockbrigs*, Mr. *Archibald Stuart*, and one Major *Cockran*, who afterwards married *Stuart*'s Daughter.

The firſt, who was bred a Maſon, was in the Year 1736 employed by Mr. *Archibald Stuart* as Overſeer of the Works then carrying on at *Douglas* Caſtle. In the Year 1737 he was ſuch a Favourite, as to be appointed Factor to the Eſtates of *Douglas* and *Roberton*, without the uſual Precaution of giving Security for the Rents, which were 1570*l.* a Year. His Charge was afterwards encreaſed, under the ſame Confidence in him, to 3000*l.* a Year. He lived conſtantly at *Douglas*, and obtained ſo viſible an Aſcendency over the Duke, that it came to be univerſally obſerved, the Management of his Grace and all his Affairs was in his Hands: Whoever had Occaſion to approach *Douglas*, muſt do it by his Means, or not at all; and he judged that his own Influence depended on keeping the Coaſt as clear as might be, wherefore he diſcouraged thoſe who were willing to come. *Anderſon* ſays, that he was not well with Mr. *White*, and ſo knew nothing of the Duke till after his, *White*'s, Death. And the Reverend Mr. *Hamilton*, a zealous Friend and forward Witneſs for his Nameſake, yet confeſſes that in his own Experience he has felt the bad Effects of Mr. *White*'s Influence; for that the Duke was at the ſame Time very credulous and very violent, and that *White* had hindered him of Acceſs for four Years, by giving him a bad Name to the Duke. Nay, ſo abſolute was he grown at length, that he was in Uſe to keep up the Duke's Letters, and even to anſwer them himſelf. One Inſtance is ſtill remembered, for the ſingular Impudence of it: Lord *Haining*, one of his Grace's Commiſſioners, wrote to the Duke, to enquire whether it was by his Grace's Authority that Mr. *White* was ſo profuſe in entertaining the Clergy at the General Aſſemblies; which Letter Mr. *White* kept up, and anſwered Lord *Haining* that it was; and if his Lordſhip and the other Commiſſioners did not like it, they might reſign, and he would get others in their Places.——This Story is pretty well authenticated; for Mr. *Archibald Stuart*, perhaps in a Fit of Jealouſy, told it himſelf of his Friend. This *White* was a crafty bad Man, who affected Religion to cover his Falſhood, and diſſembled Friendſhip to maſque his Malice. He made ſeveral believe him the Friend of Lady *Jane*, while he was wilfully undoing her with the Duke by the cruelleſt Falſhoods.

D. P. 439 F.
P. P. 320. D.
—— 331. A.
—— 319. A.
D. P. 899. E.
P. P. 317. H.
—— 331. G.
D. P. 439. G.
P. P. 320. G.
—— 331. B. C.
—— 318. L.
—— 330 D.
D. P. 884. D.

Mr. *Archibald Stuart* was Doer at once to the Dukes of *Douglas* and *Hamilton*.—The firſt Employment made him a very important Servant to the latter, and probably procured him that Employment. He was Tutor to the preſent Duke. Extremely ſenſible of his Uſefulneſs, and that his Intereſt lay in exerting it to the utmoſt, he made a ſtrict Connection with Mr. *White*, and found Means to engage him altogether in his Purpoſes. What thoſe Means were is difficult to trace, after ſo great Length of Time, and in the Darkneſs of a foul Conſpiracy. But it was certainly the Belief of many, and among the reſt of the Duke *himſelf*, that he was to have for his Share of the Plunder a Part of the *Douglas* Eſtate, called the Mailings of *Leſmahagow*.

D. P. 898. A.
—— 440. D.

This was Matter of future Expectation. In the mean Time it has been proved, in the Year 1759, that he defrauded the Duke of ſeveral thouſand Pounds, in a Way which could not have been without Mr. *Stuart*'s Privity. If extraordinary Anxiety had not been uſed to ſhield Mr. *Stuart* from the Edge of that Enquiry, a more explicit Account of that Matter would probably have turned up. Not that ſuch Evidence is wanting to eſtabliſh in Point of Fact the Concert in which theſe Gentlemen belied Lady *Jane*.

Major *Cockran* ſeems to have been rather an Inſtrument of their Malice, than a principal Agent: A very active Inſtrument, however: His Idleneſs and Rank gave him Acceſs to a Variety of People; and he made diligent Uſe of it, to circulate the Falſehoods which they invented: By which Means he had the Merit of contributing, in a very eminent Degree, to the Diſtreſſes and Death of Lady *Jane*.

It was difficult enough in every Event, to introduce into the *Douglas* Succeſſion, a Race which the Duke had never thought of before; but downright impoſſible while Lady *Jane* retained her Place in the Duke's Affection: To ſubvert this was their firſt Aim.

Even

Even though the Duke had been open to general Acceſs, no Obſervation could trace, or Memory record, the numberleſs little Arts which People, bent on ſuch Purpoſes, practiſe to obtain them: Accident, however, has preſerved a few, juſt enough for a Specimen and Proof of the reſt.

P. P. 328. F. G. If ſhe happened not to be at Home when the Duke viſited her, his Pride was applied to, Neglect was inſinuated: The Behaviour of her Friends was miſconſtrued in the ſame Manner, and placed to her Account. In this Light Mr. *White* repreſented a Story, in itſelf quite indifferent.—The Duke went to viſit Lady *Jane* at *Edinburgh*: She was gone to Lord *Roſs*'s at *Melville*. The Duke went thither: Lady *Jane* was at Church; Lord *Roſs* was ill, and could not wait upon him: The Duke was made to underſtand this as a meditated and concerted Piece of Diſreſpect.

D. P. 896. C. E. His Impetuoſity had given new Matter of Offence, which together with his frequent Reſort to
P. P. 328. 1 L. *Edinburgh*, called to People's Mind his former unfortunate Conduct.—Lord *Ilay* wrote to Lady *Jane*
—— 329. A. B. upon that Subject: Lady *Jane*, quite unſuſpecting that ſhe had loſt any Part of his Confidence, wrote her Advice with her uſual Freedom, Affection, and Zeal. The little Jealouſies which had been carefully infuſed; the Soreneſs of his Mind on that Subject, and his Impatience of Reſtraint, contributed to make theſe Letters ſeem offenſive: He uttered ſtrong Expreſſions of Reſentment to his Siſter. His Temper was not ſuffered to cool: On the contrary, they fomented his Anger, by repreſenting the whole Paſſage as a Contrivance of Lady *Jane* to have him confined, that ſhe might get Poſſeſſion of his Eſtate.—The Duke enraged, ſhewed about the Letter as the Cauſe of his Quarrel; but it does not appear that he ſatisfied any Body of the Juſtice of it, who had not previouſly ſatisfied him on that Head. Mr. *Hamilton*, the only Witneſs who ſpeaks to the Contents, calls it a Letter of friendly Advice: Yet was their peſtilent Idea inceſſantly repeated to him by the Partizans, and even by the Duke of *Hamilton* himſelf. That it was this which
D. P. 896. E. kindled the Duke's Reſentment againſt his Siſter, Mr. *White* was not aſhamed to avow; and Mr.
P. P. 329. A. *Hamilton* of *Overton* being aſked that Queſtion by the Purſuers, gave the Duke's own Words,
—— 310. E. G. "That in Return to what he had done for Lady *Jane*, in bringing her from *France*, and paying a "great Deal of Money for his Mother and her, he was informed that ſhe had applied to the Duke "of *Argyl* for a Warrant, and wanted to have him confined as a Madman, that ſhe might ſit down "upon the Eſtate, and take Poſſeſſion of it." Which Information Mr. *Hamilton* was perſuaded the Duke believed; and that it was one of the Cauſes of their Differences. In a Converſation with the Rev. Mr. *Hamilton*, who preſſed him to marry, he refuſed, for he was eaſy what Way his Eſtate
—— 328. D. E. went: "*Janie* once thought to get it ſequeſtered, and ſhe put in Poſſeſſion, but ſhe ſhould ne- "ver get a Sixpence by him while ſhe breathed." Who gave the Duke ſuch Information is not left to Conjecture, though that might be ſufficient to point out ſuch Authors.—The Duke himſelf de-
D. P. 428. A. clared it was Mr. *White* and Mr. *Archibald Stuart*.

—— 434. C. D. Some ſhort Time after, the Duke, who was little known at *Edinburgh*, and ill thought of by the
—— 897. A. C. People, was inſulted there in his own Houſe by the Mob.—Who could have thought of referring this to Lady *Jane*, or of hoping to get ſuch an Inſinuation believed. Yet he was made to believe a formed Story, that the Mob had been hired by Lady *Jane*, and headed by Colonel *Stewart*, with whom ſhe was at that Time intimate, to murder him, or carry him off to *St. Kilda*, that they might get the
—— 428. A. Eſtate into their own Hands. And Mr. *White* and Mr. *Archibald Stuart* vouched the Truth of this Story alſo.

16 Oct. 1744. In this Temper an Inſtrument of Revocation was produced, whereby, for *certain moſt juſt Cauſes*, and to the End, that failing himſelf, and the Heirs Male and *Female* of his Body, his Eſtate might deſcend to the *Heirs of antient Rights and Inveſtitures*; he makes a general Revocation of all his for-
Informat. mer Deeds of Settlement, *with Power to make new Settlements*.—This Inſtrument is atteſted by the
1762. p. 30. ſaid Mr. *James White* and Mr. *Archibald Stuart*; and Duplicates were depoſited with each.—This implies, according to the Purſuers, *His being made ſenſible of the Folly of diſpoſing in Favour of his Siſter, which muſt have ſunk his Family, by dividing the Eſtate from the Honours: Whereupon he reſolved to tranſmit them together*. But the Truth is, he had not *then* learnt, that tranſmitting his Eſtate to *Female Heirs* was *ſinking* it; or that making it an *Appennage* to *another* Name and Family would ſave it. He was provoked enough to withdraw every Token of his own Affection, but not to intercept the Bounty of her Father, and her own Rights of Blood. She ſtill remained the preſumptive Heireſs of *his Inveſtitures*, though ſhe loſt the more immediate Benefit he had conferred upon her.

Thus Meſſ. *White* and *Stuart* judged, and perſiſted in repeating the ſame, and inventing other Calumnies on Lady *Jane*.

D. P. 427. F. G. In 1745 the Rebels inſulted *Douglas* Caſtle. The ſame Gentlemen found Means to perſuade the Duke
—— 428. A. B. that Lady *Jane* had ſet them on to take away his Money and Arms.----As if the Rebels wanted a Pretext to take Money and Arms.---Even the prejudiced Duke of *Douglas* could not have ſwallowed ſuch a Story, if he had not been firſt taught to hate Colonel *Stewart* (with whom
P. P. 327. K. L. his Siſter was then much connected) as a Jacobite and Papiſt, and to believe him involved in that Rebellion.

Lady

Lady *Jane*, debarred from Acceſs to her Brother, and uneaſy in her Mind, determined to change at leaſt the uncomfortable Scene. Being engaged in a very intimate Connection with Colonel *Stewart*, ſhe reſolved to marry him and go abroad.

She was married accordingly, by one Mr. *Keith*, at her own Houſe, and paſſed through *Holland*, into *Germany*, where ſhe became pregnant, and from thence to *France*, where ſhe was delivered of two Children. 4 Aug. 1746. D. P. 999. C.

Col. *Stewart* was a younger Brother of the Houſe of *Grantully*; a Man of Family, but no Fortune; of a fine Figure, lively Converſation, and allowed Honour; but, withal, quite thoughtleſs, and extremely profuſe. It was an unlikely Connection for ſo accompliſhed a Perſon as Lady *Jane* to form: A Step, perhaps, fitter to be forgiven than applauded.

This precipitate and imprudent Marriage, without Notice to the Duke, gave juſt Offence to him, and cruel Advantages to her Enemies; which they too ſucceſsfully employed to ruin her.

Nothing ſhe had ſaid or done, nor even any Thing they had taxed her of ſaying or doing, had provoked the Duke to the Point of meditating any Alteration in his Family Settlements. A Line of Heirs now offered, correſponding exactly to the Wiſhes he had expreſſed ſo anxiouſly while his Siſter poſſeſſed that Place in his Boſom which ſhe well deſerved to hold. They were driven to the deſperate Meaſure of undertaking to inculcate in him that Belief, which they could not perſuade themſelves to entertain, that the Children were ſuppoſititious.

It demanded ſtrong Proof to maintain that a Woman of remarkable Delicacy and Honour, highly born, religiouſly educated, and poſſeſſed of the general Eſteem, ſhould plunge at once into a Scene of Falſehood, Baſeneſs, Guilt, and Shame; to ſpend the whole Reſidue of her Life in the hourly Practice of hateful Diſſimulation; Nature, Conſcience, Pride, every juſt and every noble Sentiment, of which Nobody had more, conſtantly revolting. They offered ſtrong Proof, if the reſt may be judged of from what has been accidentally preſerved; and yet with all the Advantages of Indignation and Prejudice already infuſed, and all the Opportunities of conveying falſe Imputations, which could be derived from her Abſence in a diſtreſſed and obſcure Situation, it will be ſeen that it coſt them many Years and much deteſtable Induſtry to bring their Purpoſes to bear.

Her Time of Life, according to the ordinary Courſe of Nature, afforded ſome little Preſumption; but that being purely accidental, was nothing, unleſs the Fact could be eſtabliſhed one Way or other.

Mr. *Archibald Stuart*, ever anxious for the Family of *Douglas*, had taken the Trouble to enquire, and ſaid, he received his Information on this Head from *Margaret Kerr*, who lived Servant with Lady *Jane* before ſhe went abroad. She told him, that before her Ladyſhip left *Scotland*, ſhe was not in a Situation to bear Children; and that the Marble Table, on which he then laid his Hand, would as ſoon bear Children. It was not remembered, nor is it very material, whether this ſtrong Figure was Mr. *Stuart*'s Inference, or ſaid to be *Margaret Kerr*'s Obſervation. This Converſation attended the firſt News of the Children. D. P. 435. D. F. —— 428. C. D. —— 437. B C.

Mr. *White* informed the Duke of another Circumſtance, no leſs deciſive of Lady *Jane*'s Fraud; viz. That Lady *Stair* diſcovered the Impoſture by looking in the Mouths of the Children, and found one to be conſiderably older than the other; which directly falſified her Ladyſhip in the Article of giving them out for Twins. —— 897. E. F.

Major *Cochran* took Care to inform himſelf of the Particulars of this Story from Lady *Stair*'s own Mouth before he would venture to aſſert it; and then he found himſelf forced by his Duty to make a full Diſcovery of the Impoſture. He had often aſſured the Duke the Children were fictitious, and now proceeds to give him an Account of the Diſcovery made by the Counteſs of *Stair*, by a Letter written expreſsly for that Purpoſe: "Your Siſter went there with the two Im- "poſtors. So ſoon as they entered the Room, the Counteſs called out to Lady *Jane*, You cannot "paſs thoſe Boys upon the World as Twins, for one of them muſt be conſiderably older than "the other. Your Siſter changed Colour; but the Counteſs of *Stair* went up briſkly to the "Children, opened their Mouths, and diſcovered by their Teeth that one of them was ſix Months "older than the other. Your Siſter propoſes to go to *London* ſoon, and take the Boys with her. "It is thought they will die one of theſe Days, as Lady *Kinnaird*'s did. I muſt entertain your "Grace with this curious Proceſs, which has lately been before the Commiſſaries. Lady "*Kinnaird* having a Pique at her Huſband's Heir, gave it out that ſhe was with Child, and was "afraid that ſhe and her Child would be in Danger from the Heir, ſo abſconded for ſome Time: "At her Return, told that ſhe had been delivered of two Boys. The Heir raiſed a Proceſs againſt "her, to produce the Boys; but her Ladyſhip, finding that the Plot would be diſcovered, was "glad to give it under her Hand that the Boys were dead. My deareſt Lord, I think it my Duty —— 417. E. —— 420. C.

" to inform your Grace of every Thing that may turn out to your Advantage; *and if ever you* " *find me vary from the Truth, believe me to be a damned Villain.*"

To Duke of Douglas. Signed THOMAS COCHRAN.

But Major *Cochran*'s Activity in the Cauſe of Juſtice did not reſt here; once got into the Train of making Diſcoveries, he puſhed them to the very Spot where the Children were bought, and the very Sum of Money paid for them: Whereupon this Friend, ſo *zealous* that he thought it his Duty to inform the Duke of every Thing which might turn out to his Grace's Advantage, and ſo *ſincere*, that he begged to be believed *a damned Villain* if ever he varied from the Truth, made all
D.P. 420. B.C. Speed to inform the Duke that Lady *Jane*'s Children had been purchaſed out of an Hoſpital, at the
—— 897. E. Rate of Eight Shillings: Mr. *White* alſo, a more deliberate Judge of Truth, confirmed that they were Impoſtors bought out of an Hoſpital.

—— 420. C. Beſides which, it was manifeſt upon their Appearance, that they were not Twins, but of quite different Ages, for one had Teeth while the other had none. " Who told you that, *Tom?*" ſays the Duke. " Lady *Stair*, a Perſon of Honour, and much to be depended upon;" for *Tom* always
—— 897. E. ſtood to the Truth of his Letter.

Theſe Repreſentations, and their Authors, are by Accident preſerved; and that they were ſo made, ſtands upon every Degree of Evidence the Nature of the Fact can admit of. The Letter which many ſaw, is atteſted by many. The Converſations which the Duke only heard, declared by the Duke: Theſe make it vehemently probable, that many more Facts, equally deciſive, were proved to the Duke's Satisfaction by the ſame Witneſſes; becauſe it is now certain, that they were juſt as capable, in every Senſe of that Word, of proving every Article which has been ſince alledged againſt the Reality of the Birth.

Thus the Impoſture was proved in all the Terms of it; the Fact of Suppoſition diſcovered; that Diſcovery further ſupported by a Circumſtance, which directly inferred it; and the Whole guarded by a Demonſtration, that the pretended Delivery was impoſſible in Nature.

P. P. 320. H. After this, Meſſ. *White*, *Stuart*, and *Cochran*, did not fail to remind the Duke, at every Turn,
—— 306. B. that the Children were not his Siſter's, but Impoſtors, bought out of an Hoſpital.
—— 307. A.G.

D.P. 897. G.E. The Duke of *Hamilton* alſo aſſerted the ſame Thing to the Duke of *Douglas*, which gave the Story great Credit; becauſe it muſt needs have proceeded from his Grace's certain Knowledge: For, as his Grace was exceedingly intereſted to have ſuch a Story believed, it was a Force upon his Delicacy to report even a Truth upon that Head.

—— 425. E. Lady *Charlotte Edwin*, Aunt to the late Duke of *Hamilton*, who appears in her Correſpond-
—— 419. F. ence with the Duke, to have preſſed the Intereſt of the *Hamilton* Family, was pleaſed to aſſert
P. P. 311. B. in one of her Letters, that his Grace's Eſtate would go to one who had neither *Douglas* Blood, nor *Douglas* Name; a very important Idea to preſs upon the Duke, who laid ſo much Streſs upon both.

D.P. 899. C.D. The Marquis of *Lothian*, and Sir *William Douglas*, who appear to have had their Share in the Perſecution of Lady *Jane*, thought it a pregnant Proof of Impoſition, that ſhe did not call her Relations, and own the Children at her Death: How ſhe did behave upon that awful Occaſion will be ſeen hereafter. In the mean Time, would either of thoſe honourable Perſons have obeyed ſuch a Summons; and what Encouragement did they give her to expect it? Which of thoſe kind Relations, by whoſe induſtrious Means ſhe was brought to die in the moſt forlorn and deſtitute Condition, would have preſented themſelves in ſuch a Scene, to hear the ſhocking Story of her Affliction and their own Guilt?

—— 428. D.E. Others, whoſe Names are not tranſmitted, were prevailed upon frequently to repeat the ſame
—— 431. E. Stories to the Duke. He declared afterwards, that he had often been told, that the Children were bought; and becauſe real Perſons enough could not be found to vouch theſe important Truths, anonymous Letters were ſent him to the ſame Effect.

—— 899. C. In the ſame Manner, the Duke was aſſured, that they were Seventy Thouſand Pound in Debt;
—— 440. F. and if his Eſtate went to them, it would ſoon go to Pot.

Theſe are ſome faint Traces, ſuch as Time hath left, and Accident hath diſcovered, ſerving to give a tolerable Idea of the Means by which the Duke was prevailed on to think his Siſter baſe and infamous, fit to be abandoned to Want, and all the Variety of Wretchedneſs ſhe ſuffered;
P. P. 306. B.C. in which the Duke certainly founded on no Knowlege, Suſpicion, or Conjecture of his own, but
—— 307. A. declared, that he had been made to believe ſo, referring to the abovementioned Evidences.

It was impoſſible to ſtop here: While Lady *Jane* was borne up and countenanced by other Friends, there was continual Danger that ſome importunate Interpoſition would undeceive him. This out-door Work fell of Courſe upon Mr. *Archibald Stuart*, and his Son-in-Law. Lady

Lady *Stair*, notwithſtanding ſhe had made a Diſcovery which ſatisfied the Duke of the Impoſture, ſeems not to have been convinced of it herſelf; ſhe ſtill ſhewed Compaſſion and Friendſhip to Lady *Jane*; and knowing Major *Cochran* to have frequent Acceſs to the Duke, entreated him to carry a Letter from her to the Duke, which ſhe explained, was to beg of his Grace to do Something for his Siſter and her Children. The Major aſſured her Ladyſhip it was in vain; and, as a Proof of it, told her what had happened to himſelf lately: He had been interceding with the Duke in Favour of his Siſter Lady *Jane*, and had even gone ſo far, as to make Uſe of *Her Ladyſhip's Name* to influence him. The Duke thereupon ſaid, He was very ſenſible of the Friendſhip of both Lady *Stair*, and of him Major *Cochran*, to himſelf and his Siſter; and as a Friend, he would ſhew him his Reaſon for not doing for his Siſter; and carried him into another Room, where he ſhewed him a Letter from Count *Douglas*, bearing, that his Grace's noble Family was well-known all over *Europe*, and that he could not bear to think of a ſpurious Brood being impoſed upon his Family; and thought it his Duty to inform his Grace, that his Siſter Lady *Jane*, and Colonel *Stewart*, had bought theſe Children out of an Hoſpital: And that the Duke had further ſaid, that he would not expoſe his Siſter in his Life-time, but that at his Death the ſaid Letter from Count *Douglas* would be found in the Boſom of his Settlement, and would juſtify him to the World for having done Nothing for his Siſter: And the Duke, moreover, deſired the Major to tell Lady *Stair* what his Reaſons were. D. P. 426. E. P. P. 352. H.

If Lady *Stair* was aſtoniſhed at this Information, the Particularity and ſober Certainty of it ſhut out all Doubt. Major *Cochran*, as warm a Friend to Lady *Jane* as herſelf, could not reſiſt ſuch Conviction. The Duke, who was beyond her Expectation tender and kindly diſpoſed to her, had ſtruggled with his own Indignation; and rather than expoſe an only Siſter to publick Reproach, choſe to undergo himſelf the publick Cenſure of a cruel and unnatural Brother. It would be ſhocking to perſiſt in teazing a good, but unhappy, Brother, upon the Account of a worthleſs Siſter. The Subject was too delicate, and the Duke felt it too ſenſibly. It would be ſhameful even to own ſo baſe a Woman for a Friend. Nothing was left but to abandon her to the Fate ſhe deſerved, and in Conſequence Lady *Stair* withdrew her Sympathy from her, and ſhe died in Want of the common Neceſſaries of Life. D. P. 427. B.

The Major told the ſame Story to Mr. *Loch*, another warm Friend of Lady *Jane*; but not with the ſame Succeſs. He happened to think differently of the Major's Character, and treated his Information with Scorn. —— 414. D.

Mr. *Archibald Stuart* alſo told the ſame Story of the Letters from Count *Douglas* to Lord *Roſs*, who felt, on hearing ſo plain and clear a Story, as Lady *Stair* had done. P. P. 353. A.

The ſame Mr. *Archibald Stuart* told it upon his own Knowledge, in the moſt ſolemn Manner, to Mr. *Loch*, that the Duke had received ſuch Letters. The Converſation paſſed at a Tavern kept by one *Wilſon*. Mr. *Loch* obſerved, that all the World thought the Duke of *Douglas* cruel to Lady *Jane*, and all about him unpardonable in not ſetting him right. He was harſh and rough in his own Vindication; but that was not material for the Duke of *Douglas*. He ſaid that his Grace had the beſt Reaſons never to countenance Lady *Jane* in any Reſpect, becauſe ſhe wanted to impoſe Children not her own upon him. *Loch* treated that as a Story ſpread by the *Hamilton* Family, to keep the Duke and his Siſter at Variance. Mr. *Stuart*, with much Earneſtneſs and Paſſion, ſwore that a Count or Chevalier *Douglas* had writ a full Account of the Story to the Duke, how Lady *Jane* came by the Children; and that the Duke, and *all of them*, were ſatisfied of the Falſity of the Children's being Lady *Jane*'s; and *therefore* the Duke had taken Care they never ſhould have a Shilling of his Fortune. D. P. 413. F. —— 414. A. —— 885. F.

Nor did this worthy Gentleman ever heſitate to charge Lady *Jane* with the ſame villainous Impoſture. P. P. 305. E.

In the ſmall Circle wherein he converſed, Mr. *White* uſed the ſame Diligence to propagate the Report. —— 320. H.

Sir *William Douglas* of *Glenbervie* either believed, or affected to believe, the ſame, and entered into warm Diſpute upon that Subject with Mr. *Douglas* of *Edrington*. But his Reaſons were ſo idle, that Mr. *Douglas* did not give Heed enough to them to remember them. His Reaſons, however, were not ſo idle as Mr. *Douglas* might think them. Sir *William Douglas* knew that Lady *Jane* left *Paris* to go and lie-in privately at *Rheims* only becauſe Lord *Morton* had offered to ſend his Lady to attend her in lying-in; and this he declared publickly. —— 373. H. L. D. P. 433. F.

It is obvious, from the Eagerneſs with which theſe Stories were circulated, that many more ſuch were told, and to a vaſt Variety of People; but it is Matter of more Wonder, that theſe have been preſerved, than that the Reſt have been loſt.

Mean While other Accidents fell out, which gave People with ſuch Diſpoſitions and Opportunities Occaſion to inflame the Duke's Diſlikes ſtill higher, if poſſible.

The Expence of her Family, and her Inattention to Money, involved her in Debts, which her Creditors profecuted by Arreſtment of her Annuity in the Duke's Hands; a Circumſtance which might have excited in an only Brother ſome Degree of Compaſſion and Charity to an only Siſter of her Quality in ſuch heavy Diſtreſs. But her Enemies ſtood ready to intercept and prejudice every kindly Reflection, and it made no Impreſſion but that of Offence to his Pride.

20 July, 1749. Mr. *Archibald Stuart* had the Pleaſure to receive a Letter miſſive from the Duke, diſcharging him to pay his Siſter any more of the Sum of 300 *l.* a Year than ſhe had then received. In Conſequence of which he did diſcontinue the Payment thereof, or any Part of it, from the Term of *Whitſunday* preceding.

This was the more extraordinary, becauſe ſhe was juſtly intitled to demand 50,000 Marks, except ſome ſmall Sums which ſhe and her Mother had already received; and 138 *l.* a Year was due to her on that Account. But ſhe had no Friend to repreſent for her to the Duke, and ſhe was forced to leave *Rheims*, where a ſmall Income would have maintained her and her little Family, to come over to *Great Britain* and beg her Bread, in no Condition to conteſt it with his Grace, if, upon other Accounts, that had been thought adviſeable. Lord *Morton* lent her 350 *l.* to bring her and her Family over; and his late Majeſty was pleaſed to give her a Penſion of 300 *l.* a Year.

D. P. 970. A. The Letter ſhe wrote to the late Mr. *Pelham* on that Occaſion, is a genuine Proof of the Delicacy and Nobleneſs of Sentiment which diſtinguiſhed Lady *Jane* in every Situation

Certain Inſtruments mentioned before, were lodged in the Hands of Mr. *Hamilton* of

Serv. 40. B. *Innerweek*, for Lady *Jane*'s Behoof; and with ſome Solemnity Lady *Jane* alledged in a Letter, which, though not addreſſed directly to the Duke, was meant for a Meſſage to him, and ſhe plainly wiſhed it might be ſhewn him, that *Douglas* of *Cavers* declared in his Grace's Hearing, at the Time of depoſiting them, *that they belonged only to her, and none other had a Right to them.* And Mr. *Hamilton*, in the Depoſition above-mentioned, ſays, *They belonged to Lady* Jane. Poſſeſſed with this Idea, with Lady *Mary Hamilton's* Privity, ſhe took them out of Mr. *Hamilton*'s Poſſeſſion, in which, if ſhe did not miſtake the Law of *Scotland*, ſhe certainly took a wrong Meaſure of her own Ability to conteſt it with the Duke of *Douglas*. This inadvertent Step was the free Gift to her Enemies of one Ground, on which to inflame the Duke's Reſentments, without the Trouble or Hazard of a Falſhood.

When Lady *Jane* returned to *Scotland* poor and deſtitute, bereaved even of Compaſſion by the Means above-mentioned, Mr. *Archibald Stuart* received her with Proceſs of Exhibition, at the Duke's Suit, to recover theſe Papers.

Lady *Jane* ſupplicated the Duke for Leave to bring him thoſe Papers herſelf, and implored only to be heard before ſhe was finally condemned upon the various Charges which had been brought againſt her: Both which Requeſts ſeemed unreaſonable, and were refuſed.

27 Oct. 1752. Whereupon ſhe gave up the ſaid Inſtruments to Mr. *Stuart*, who till that Time affected to ap-

D. P. 1002. A. Serv. 41. D. pear her Friend. But the inſulting Demonſtrations of Triumph with which he took away her only Reſource undeceived her. He obſerved that ſhe was ſhocked at it, and with a Duplicity equally deteſtable, promiſed that he would intercede with her Brother to reſtore the Bond and Annuity.

That Mr. *Stuart* meant nothing in making ſuch Promiſes, will appear in the Sequel.

From this Moment ſhe never ſaw or heard *from* him more; and all ſhe heard *of* him was, that he was conſtantly at the *Abbey*, contriving Matters with the Duke of *Hamilton*.

3 Aug. 1753. But though Mr. *Stuart* never applied to Lady *Jane* any more, he did by great Diligence ſo ſpeed his Suit, as in her Abſence to obtain a Decreet of Exhibition, and Delivery of thoſe very Papers he had received on the 27th of *October* preceding, and of other Papers generally deſcribed in ſuch Decreet, which was never carried to an Examination of Lady *Jane* thereupon: Why it was ſuffered to reſt ſo is not hard to gueſs.

He could learn nothing about thoſe Papers which he had received ſince the Proceſs raiſed; and for

D. P. 1000. C. the reſt, it appears from his own Account, that he well knew how they were diſpoſed of. In the Year 1745 or 1746 the Duke of *Douglas* found theſe very Papers: Mr. *Stuart* looked over them to ſearch for Clauſes of Revocation. They were theſe which *Douglas* of *Cavers* and the Marchioneſs (as the Duke ſaid on that Occaſion) had induced him to make in Favour of Lady *Jane*, which had then been long miſſing, which *he ſuſpected his Mother and Siſter had abſtracted*, and which he now wanted to deſtroy, and accordingly he burnt them.

Purſuers Petition, 10 Mar. 1767. But to clear up his Character, Mr. *Archibald Stuart* had produced two Letters from the Duke of *Douglas*, one dated the 16th of *January*, 1752, before the Proceſs was raiſed; the other the 7th of *November* 1752, after the Receit.

The firſt takes Notice of a Letter to Mr. *White* from Mr. *Stuart*, containing a Caſe laid before Counſel, with his Anſwer; and is a Direction to purſue the Proceſs with all his Might.

This

This proves what has been largely ſet forth before, that the Duke was much enraged againſt his poor Siſter; but does not explain what Repreſentations had been made to him either in Converſation, or by that very Caſe laid before Counſel, which, if it would have borne the Light, now would doubtleſs have been produced.

The ſecond obſerves, by a *Copy* of *the Receit* dated the 27th of *October* 1752, that *ſhe had not delivered all the Papers depoſited in the Hands of Mr.* Hamilton *of* Innerweek *the 26th of* July 1733, *a Note of which you had from me a long Time ago*; and as my Siſter may likewiſe be poſſeſſed of a great many other Papers granted by me, which now eſcape my Memory, I deſire you will inſiſt in the Action, *&c.*

Now it happens, that the *real Receit* does contain *all* the Papers which his Grace had granted Lady *Jane*, and depoſited in the Hands of Mr. *Hamilton*, as appeared by the Note, then *out of* the Duke's and *in* Mr. *Stuart*'s Poſſeſſion; and what became of the reſt Mr. *Stuart* was able to explain.

But ſuppoſe the Duke's Authority, though founded on an apparent Miſapprehenſion, bound him to proceed even without correcting his Client's Miſapprehenſion, by the Papers which that Client had put out of his own Hands into his; Why did he not proceed? Why did he not examine Lady *Jane* upon his Decreet, and without which it was Waſte-Paper? Becauſe he knew that nothing could be made of ſuch an Examination, but a Diſcovery of his own unfair Proceeding.

In the Year 1752, ſhe had been adviſed by her Friends, as the laſt Effort, to throw herſelf at the Duke's Feet and beg to be heard. She wrote to implore his Grace's Leave; but her Letter, if it found Acceſs, received no Anſwer. Probably it was diſpoſed of like Lord *Haining*'s, and other Applications, which Mr. *White* diſapproved; for it has not appeared ſince; notwithſtanding which, ſhe was perſuaded to go to him. She went accordingly to Mr. *Hamilton*'s at *Douglas*, and from thence took the Children with her to the Caſtle. She ſtood at the little Gate, and ſaw *Greenſhields*, the Duke's Valet de Chambre, paſſing through the Court; ſhe called him to her, and told him ſhe was come with her Children to wait upon the Duke. He propoſed to open the Gate and carry her in; but ſhe refuſed till he had acquainted the Duke. He did go to the Duke and tell him. The Duke ſeemed ſurpriſed, and ſtood ſome Time thoughtful; and then, without the leaſt Reflection upon her, ſaid he had no Room to put them in, and aſked where they could be lodged: *Greenſhields* told his Grace there was Room enough.---But the Duke ordered him to call *White*, who converſed a While with the Duke apart, and then ordered *Greenſhields* to tell Lady *Jane* ſhe could get no Acceſs there. P. P. 329. G. —— 330. A. D. P. 898. A. —— 970. F.

The Duke's Surpriſe and Irreſolution looked much as if he had not received her former Letter; and That, together with his Enquiring after the Children when ſhe was gone, ſhewed he was ſtill ſuſceptible of Humanity toward his Siſter, if the ſtrong Perſuaſions of thoſe he relied moſt upon had not intercepted his Compaſſion.

Lady *Jane* returned to Mr. *Hamilton*'s, and wrote him a Letter, which, if it had found its Way to him in the Temper he then ſhewed, muſt have melted him. She concludes with repeating her Errand to *Douglas*. "All I beg is to be permitted to ſpeak but for a few Moments to your Grace, "and if I don't to your own Conviction clear up my injured Innocence, inflict what Puniſhment "you pleaſe upon me; I ſhall receive it willingly, and ſhall think I deſerve your utmoſt Rigour "if I cannot juſtify myſelf fully of all that is baſely and falſely laid to my Charge. In Hopes that "your Grace will, with great Goodneſs and Humanity, allow this my Petition to take Place in "your Heart, and you will call me back again, I ſhall remain this Day and the following Night in "*Douglas* Town."---But if the Letter had contained Proofs of her Innocence as ſtrong as Revelation, they would have been but ſo many more cogent Reaſons for not ſhewing it him. This Letter likewiſe is not preſerved, but a Copy of it is. D. P. 971. C.

This Event ſat cloſe to her Heart ever after, and was ſoon followed by another ſtill more afflicting. In the Spring following ſhe loſt her youngeſt Son, in Truth her favourite Child, if her extraordinary Tenderneſs to both admitted that Sort of Diſtinction. But the Weakneſs of his Habit endeared him, and perhaps the great Reſemblance he bore to her own Perſon. 5 May, 1753.

She returned to *Scotland* twelve Days after Mr. *Stuart* got the above-mentioned Judgment againſt her, but the Hand of Death was upon her: This endleſs Variety of Affliction broke her Heart. Pinched with the Want of Neceſſaries, her Huſband in Priſon for Debt, her Infant Child looking up to her for Support, the preſumptive Heir of her own Miſeries, and the very Tears of ſo diſtreſſed a Mother ſcorned by her neareſt Relations, ſhe wrote, and talked, and ſtrove to think of this like a Chriſtian, but ſhe felt it like a Woman, and ſunk under it. Her Strength worn out, her Eyes beginning to fail, the poor dying Creature wrote her laſt Letter to her Brother, not to beg his Protection or Favour; the Time for that was gone; but remembering with natural Regret the dear Affection which had once ſubſiſted between them, ſhe longed, in the Hour of Death, to be reconciled to her D. P. 994. F.

only

only Brother, to receive his Pardon, and to bleſs him. The Letter was ſent, and like the former ſuppreſſed.

Theſe Gentlemen having thus proceeded with great Lenity to Lady *Jane*, and much Kindneſs to the Duke, not ſuffering him to ſee her or her Letters, for Fear of diſquieting him, nor publiſhing the many manifeſt Proofs of her Baſeneſs for Fear of expoſing her, as the Major told Lady *Stair*, to the World, in her Brother's Life-Time; but, contenting themſelves for the preſent juſt to ſtrip her of every Shilling, and bring her down to the Grave with Sorrow; their next Object was to overcome the *Indifference* the Duke had expreſſed, *what Way his Eſtate went.*

P. P. 328. D.

2 June, 1752. He by three Inſtruments compleated the Revocation of 1744, of all the Favours he had ever ſhewn his Siſter.

2 Oct. 1754. A Deed imports to have been executed, which recites the Pretence of the Family of *Hamilton* to ſucceed in the Eſtate of *Douglas* (namely, that ſeveral Marriage Settlements, if they had never been altered, would have guided Part of the Eſtate that Way) and therefore diſpoſes to himſelf and his Heirs Male---Heirs Male of Duke of *Hamilton*, his great Uncle---Heirs Female of his own Body---neareſt Heirs Male---Heirs whatſoever---with Abundance of Clauſes to perpetuate the ſaid Intail, and others not material, except the Clauſe of Revocation. The only Witneſſes are the ſaid Meſſieurs *White* and *Stuart*, and his Son *Andrew*, then his Clerk.

The Houſe of *Hamilton* having now, for the firſt Time, crept into the Duke's Settlements, it would have been worth more Curioſity than has been employed about it to trace the Means. All that appears now is, that no Commiſſioner, Friend, Counſel, or Doer, for the Duke of *Douglas* had the leaſt Share in it. Mr. *Archibald Stuart*, Agent for the Duke of *Hamilton*, availing himſelf of the Opportunity which his Employment under the Duke of *Douglas* furniſhed, made ſo free with the Family Settlements and Title Deeds of *Douglas*, as to lay them all before Duke *Hamilton*'s Counſel on his Grace's peculiar Account. It is not pretended, that this Tranſaction was with the Privity or Conſent of the Duke of *Douglas*; nor would it have been believed, if Mr. *Archibald Stuart* had been pleaſed to ſwear it, that the Pride of the Duke would have ſtooped ſo low as making a voluntary Settlement in the Nature of his laſt Will, to call upon his deſigned Heirs to pay the Expence of adviſing with Counſel. Nay, Mr. *Stuart* has gone ſo far as to withold the Caſe and Opinion from the Duke of *Douglas* himſelf, and his Nephew; avowing, as his Pretence, that it was the Duke of *Hamilton*'s Paper. His Words are, That as Agent and Doer for the laſt Duke of *Hamilton*, he adviſed and conſulted with Mr. *Robert Craigie* in Relation to the Duke of *Douglas*'s Power over his Eſtate, and the Duke of *Hamilton* paid the Fees of the Conſultation; which Memorial and Opinion the Deponent keeps as a Writing belonging to Duke *Hamilton*.

D. P. 443. E. —— 1001. F.

—— 1001. F.

This Paſſage Mr. *Stuart* (with the Caſe and Opinion in his Pocket) ſometimes ſays happened in the Year 1752, ſometimes 1753, and ſometimes 1754. The Date of the Deed determines for the laſt.

—— 1001. F. —— 443. E.

1 Oct. 1754. D. P. 1003. C.

By another Inſtrument reciting the former, and his Purpoſe to devolve his perſonal Eſtate on the ſame Series of Heirs, *and for certain ſpecial Reaſons to debar and exclude the Children and Iſſue of the deceaſed Lady* Jane Douglas *his Siſter from all Right of Succeſſion to the ſame.* Therefore he not only *debars and excludes the ſaid Children and Iſſue of his ſaid Siſter*, &c. but alſo diſpoſes to his Heirs Male of Body—his Heirs Female of Body—Heirs Male of *Hamilton*, &c. as before.

20 June, 1757. D. P. 1004. B.

The Duke executed another Deed. It recites the two former Deeds, and his Purpoſe therein, that *no Part of his Eſtate ſhould go to the Iſſue of the deceaſed Lady* Jane *his Siſter.* And that he had purchaſed other Eſtates; and *it was ſtill his Purpoſe to ſeclude the Iſſue of his ſaid Siſter from all his Eſtate whatſoever*; but to vary the Subſtitution ſo as to inſert his own Female Iſſue next to his Iſſue Male. Therefore he does accordingly *debar and exclude the Children and Iſſue of the ſaid deceaſed Lady* Jane Douglas *from all Right of Succeſſion to his Eſtate*, &c. And diſpoſes to his Heirs Male of Body---Heirs Female of Body—and for the Reſt as before.

This perfected the Ruin of the Defender. It became now indifferent to his Intereſt in his Uncle's Eſtate, whether he were the lawful Son of Lady *Jane*, as the two laſt Deeds ſuppoſed, or bought out of an Hoſpital, picked up in the Streets of *Paris*, or furniſhed by the Diſorders of a Nunnery; all which Stories his Enemies had given out: And yet it looked ſomething odd, that after having prevailed againſt him, by maintaining, upon the moſt clear, direct, and expreſs Evidence, that he was an *Impoſtor*, they ſhould think of excluding him under a *Deſignation* which deſcribed him as the *lawful Iſſue of Lady* Jane. Did they believe their own Aſſertions, why then ſo anxious, expreſsly and by Name, to exclude one who never had, or could have, the Pretence to ſucceed? Did they but doubt, why hazard the Perpetration of ſo foul a Fraud, as depriving a Man of his Eſtate and Condition by falſe Suggeſtions? Did they believe him the real Son of Lady *Jane*, Words cannot denote the Baſeneſs of that Man and his Tools, who could purchaſe an Eſtate at the Expence of ſo much Profligacy.

From

From the only new Limitation put into the laſt Deed, the Duke appears in the Year 1757 to have entertained ſome Thoughts of Marriage, and the Expectation of Children. It appears alſo, that he had been adviſed againſt Marriage: It was bad for his Health. The true Reaſon is more obvious, and leſs abſurd: The World thought hardly of the Duke, for the Treatment which he had uſed to his Siſter. This Story of the Impoſture, though graced with his Name, and ſupported by confident Aſſertions of expreſs Authority for it, made little Way but with that very confined Number whom they had Opportunity and Authority enough to convince. In general it was thought too much to have born down an only Siſter, the moſt amiable of Women, with Sorrow to her Grave; and afterwards to trample upon her Aſhes, purſue her Memory with Diſgrace, and leave her Child to ſtarve, merely upon the *Suggeſtion* of an Impoſture, which carried many Marks of *Calumny*, none ſtronger than the *Names* of its *Authors*. At leaſt, it was fit to *enquire* into the Foundation of it. It was eaſily foreſeen, that ſuch would be peculiarly the Sentiments of any Woman of Honour whom the Duke ſhould marry; and that Enquiry was equivalent to Detection; and that the free Communication with the World, which would probably follow ſuch an Event, was equivalent to enquiring: It was therefore bad for the Duke's Health to marry. He did, however, marry a Lady of his own Name and Family, Miſs *Douglas* of *Mains*, a Woman of Honour, and what was worſe ſtill, of the Family of *Douglas*, which had been peculiarly mortified by what had happened to Lady *Jane*.

P. P. 328. B.

1 Mar. 1758.

CHAP. IV.

Of the Means whereby the above mentioned Falſehoods were detected, and the Duke undeceived.

IT fell of Courſe to the Duchefs to hear all the Reaſons of the Duke's Procedure; and as many referred to very credible Authority, it was no leſs obvious to enquire after the Truth: That muſt be attended with one of theſe good Conſequences, either to ſet the Duke right in the general Opinion, or to correct his own Miſtake. She had no Intereſt or Inducement to ſupport the Cauſe of an Impoſtor, and graft him upon the great Name and Family ſhe belonged to. But if he were the real Son of Lady *Jane*, ſhe had every Inducement to a generous Mind, of Kindred, Generoſity, Juſtice, and the Honour of the Family, to provide that its neareſt Relation ſhould not be caſt off to the Support of Strangers, who could not be brought to think Ill of Lady *Jane* without evident Cauſe.

In the Courſe of this Enquiry, every Article of all which had been ſo confidently aſſerted to the Duke, turned out flatly falſe.

1. That ſhe had interceded with Lord *Ilay*, to get his Grace confined as a Madman, and ſo take Poſſeſſion of the Eſtate herſelf, was aſſerted by Mr. *White* and Mr. *Archibald Stuart*. Lord *Ilay* (then Duke of *Argyle*) in a Viſit which he made the Duke at the *Abbey* after his Marriage, juſtified her from having ever complained of the Duke, and added, that ſhe had intreated him, "if poſſible, to "procure her Brother a Pardon, and to carry him to *London*, where it would be ſeen, that the "Duke's only Ailment was Lowneſs of Spirits; and that he needed only to be known to be "agreeable."

D. P. 428. B. C.

2. The Stories of the *Edinburgh* Mob, and of the Rebels, were vouched only by Mr. *James White* and Mr. *Archibald Stuart*, and conſequently were out of the Reach of Truth to detect, except ſo far as their Inconſiſtency with the Account given by the Duke of *Argyle* of her Behaviour, their own egregious Improbability, and that Scene of Knavery, which came to Light at *White*'s Death, put Diſcountenance upon them.

3. That *Margaret Kerr* (her Servant before ſhe married) had aſſerted ſhe was as incapable of bearing Children as a Marble Table. This was told the Duke by Mr. *Archibald Stuart* and Major *Cochran*, and Mr. *White* in particular. Mr. *Stuart* pretended to have it from *Margaret Kerr* herſelf. In Truth, *Margaret Kerr* never ſaw Major *Cochran* at all, nor *Stuart* after Lady *Jane* firſt went Abroad, nor ever converſed with *White* more than once; when he told her that the Duke had received a Letter from Lady *Jane*, informing him of the Marriage; and telling him, in Apology for doing it ſo late, that ſhe never meant to own it, if ſhe had not proved with Child. She heard alſo, from general Rumour, that Sir *John* apprized the Duke of her Delivery by a Letter dated the 9th Day after; which Circumſtance ſhe took for an Intimation of her being out of Danger. She never entertained any Doubt of the Truth of this, for *believing her to be married, ſhe did not the leaſt doubt her having Children*.

P. P. 47. A. I.

4. That Lady *Stair* had diſcovered the Impoſture, and put Lady *Jane* to Confuſion, was aſſerted in Writing by Major *Cochran*, and in Converſation, by him and *White*. In Fact, Lady *Stair* had never converſed with Major *Cochran* on the Subject of the Children, nor more than once about Lady *Jane*, when ſhe requeſted his Interceſſion with the Duke, and he anſwered her with the long Story, mentioned before, of the Letter from Count *Douglas*. She exclaimed ſtrongly againſt his Falſhood;

P. P. 415. A. G.
—— 416. A. B.
—— 420. D. F.
—— 426. D G.
—— 427. A D.
P. P. 309. K. K.

P. P. 352. C. L. Falſhood; and when that Matter had been cleared up to her, declared, on many Occaſions, that ſhe wondered how any Body could doubt that the Children were Lady *Jane*'s.

5. That the Children were bought out of an Hoſpital for Eight Shillings, aſſerted by Mr. *James White* and Major *Cochran* to the Duke. Theſe Gentlemen were pleaſed to ſuppreſs the Authority upon which they aſſerted that, perhaps becauſe it was ſuperfluous, as his Grace had it then in his Pocket; which may be the Reaſon why their worthy Collegue, Mr. *Stuart*, is not traced in maintaining the ſame Falſhood; but to others it has been ſeen: They relied on the Letter of Count *Douglas* to the Duke.

6. That Count *Douglas* wrote the Duke a Letter, bearing that he thought it his Duty to inform his Grace, that his Siſter, Lady *Jane*, and Col. *Stewart*, had bought theſe Children out of an Hoſpital. This Mr. *Archibald Stuart* ſwore to his Knowledge of; Major *Cochran* actually ſaw; and Mr. *James White* aſſerted to be true; and which, if true, it was well known he certainly ſaw. That the Duke of *Douglas* ſhewed this Letter to Major *Cochran* as his Reaſon for refuſing the Major's kind Interceſſion for his Siſter, and told him that he would not expoſe her in his Life, but would leave it in the Boſom of his Settlement to juſtify him to the World.

In Truth, no ſuch Letter ever exiſted, or has been heard of, except in Conſequence of the falſe
P. P. 443. B. C. Report above mentioned. Mr. *Archibald Stuart* depoſes, that he neither knows, or ſuſpects, where ſuch Letters, or Copies of ſuch Letters, are, *unleſs they be in the Hands of the Ducheſs of* Douglas, *or thoſe managing for her in this Cauſe*. A pretty extraordinary Inſinuation this, after the Ducheſs
—— 352. B. C. of *Douglas* has ſworn that ſhe never ſaw ſuch Letter, or Copy thereof; and after Mr. *Stuart* himſelf
D. P. 427. D. C. heard from the Duke that he never received any ſuch; and after the Duke had proteſted to Lady *Stair*, that as a Man of Honour, and as he ſhould anſwer it to God, he had never received
P. P. 352. L. any ſuch Letter. He declared at the ſame Time, with much Emotion of Tenderneſs and Concern, that he never held any ſuch Converſation with *Cochran* as he had reported to Lady *Stair*.

7. That Lord and Lady *Morton* being at *Paris* at the Time of Lady *Jane*'s Lying-in, his Lordſhip offered to ſend Lady *Morton* to attend her on that Occaſion; to avoid which ſhe went from
D. P. 434. A. B. *Paris* privately, to lie-in at *Rheims*. Lord *Morton* being queſtioned upon this Subject, ſaid, that he and my Lady had left *Paris* long before Lady *Jane* came there. And it is now agreed on all Hands, that ſhe did not leave *Paris* to lie-in.

The Behaviour of thoſe two Gentlemen, Meſſ. *James White* and *Archibald Stuart*, though little attended to at the Time, or enquired after ſince, carried ſome Marks of Suſpicion about it. Mr. *Archibald Stuart* had been intimate with the Colonel; was aſſiduous to enquire after him and Lady *Jane* while they were Abroad; profeſſed Friendſhip to them on ſeveral Occaſions, and even when his Inclination was half diſcovered he drew back, and made large Promiſes of Friendſhip and Service. Mr. *James White* finding how ungracious the Duke's Behaviour to his Siſter appeared,
P. P. 330. I. K. was at Pains to perſuade that he had laboured with his Grace in her Favour. "I am extremely "concerned," ſaid he to Mr. *Hamilton*, "that the Duke would not ſee Lady *Jane*; and I ſaid "to him, Though you will not ſee her, I would earneſtly beg of your Grace to give her a Purſe of "Gold, for I am ſure ſhe is in very ſtraitened Circumſtances." And what tended to make Mr. *Hamilton* think *White* ſincere was, that he afterwards ordered his Son to give Lady *Jane* 50*l*. Mr.
—— 303. K. L. *Hamilton* underſtood this to be a Preſent. The Truth was, that the Rev. Mr. *Thomas White*, Son
—— 304. A. B. of *James*, lent Lady *Jane* at one Time 30*l*. upon her Note, and at another 20*l*. But he knows nothing of his Father's being even her Creditor for any Sum of Money. It is now certain they were both inceſſant in working her Ruin by the baſeſt Means.

Again, when they happened to be queſtioned more cloſely of Things which they affected the
D. P. 899. D. E. cleareſt Knowledge of, each referred to the other as his Author. Thus *White*, who firſt raiſed the Report that the Children were not Lady *Jane*'s, ſaid he had it from Mr. *Stuart*. Thus *Stuart*, who
—— 427. F. G. had ſworn to the Duke's Receipt of the Letter from Count *Douglas*, being confronted with the
—— 443. A. B. Duke, ſaid he had heard it---Afterwards, that he never doubted of it---And *White* being dead, he ſwears that he heard it from him. Perhaps ſo; but as he has not ſworn this to be the firſt Time of hearing it, it will be no Offence to his Truth and Sincerity to believe that he invented it, eſpecially as his Son-in-law is proved to have taken the Lead in propagating it.

If that could be traced, it would be worth Curioſity to enquire how theſe Gentlemen were paid for the vile Service they were employed in.

Mr. *White*, beſides the Promiſe he was ſuppoſed to have from the *Hamiltons* of the Mailings of *Leſmahagow*, was paid in the mean Time in more ſubſtantial Coin, as has been ſeen.

If Mr. *Stuart* took as good Care of himſelf in the Management of both Eſtates as he did for his Friend in the Management of one, he was ſufficiently paid for all the Violence he did his Conſcience, over and above any undiſcovered Bargain he may have made for it.

The

The Purſuers ſeem at a Loſs whether to diſclaim or defend theſe three worthy Perſons. They are ſurprized theſe Reports ſhould be referred to the Family of *Hamilton*. They are inclined alſo to think the Authors of them may be innocent.

How is it poſſible not to refer theſe Reports to the Family of *Hamilton*, when their Agents, Partizans, the Family, nay, the Duke himſelf, were concerned in raiſing, preſſing them upon the Duke of *Douglas*, and otherwiſe propagating them? And when it is obſerved alſo what Uſe was made of them, in obtaining Settlements in their Favour---To call them innocent is an Affront to common Senſe.

Of *White* they ſay, that the Duke blamed him for preventing his ſeeing Lady *Jane when ſhe came with her pretended Children*. But it is poſſible he may have done what he thought right, and given the Duke the Advice which appeared to him to be beſt. It is likewiſe poſſible, that his Conduct in this Particular may have proceeded merely from a View to his own Intereſt. It is not impoſſible, that his View was to maintain his own Influence, which he had Reaſon to apprehend might be diminiſhed if *the Duke and his Siſter came to be reconciled*.

It is not true that the Duke blamed him for repelling her pretended Children; nor is it true that preventing her Viſit was the only Article of Blame which the Duke put upon him. Many other Inſtances of Falſhood and Inhumanity have been enumerated, many which have not come down, were referred to: Nor is it poſſible that any Man is bad enough to think it right to ruin an innocent Perſon with falſe Accuſation, or good Advice, to proceed againſt her with Rancour.

Whether his interpoſing, in ſo deteſtable a Manner, to hinder an only Brother from being reconciled to an only Siſter in Diſtreſs, was in View to the Intereſt of the *Hamilton* Family, or to his own, or to both, may eaſily be collected from the foregoing Story, if that be of any Conſequence: But the Effect was the ſame; it miſled the Duke to diſinherit his Nephew.

In Defence of Major *Cochran*, they ſtate his only Crime to be that of writing the abovementioned Letter. They affect to doubt the Authenticity of the Copy produced; and they ſay it was written in Favour of the Earl of *Hyndford*, not of the Duke of *Hamilton*.

This is a very partial and inadequate Defence. Many other Falſhoods of the ſame Kind have been expreſsly proved upon Major *Cochran*, without referring to thoſe which ſuch Impertinence as his, employed to that Purpoſe, muſt have vented on the ſame Subject.

The Authenticity of the Letter (if that were all) has been well eſtabliſhed. The Original was burnt in the Fire which conſumed *Douglas* Caſtle, in the Year 1758. A Copy made by *Inglis* the Duke's Secretary, was found in the Poſſeſſion of another Servant. Mr. *Hamilton* repeated the Purport of it without referring to the Copy. Sir *William Douglas* certified the Copy of it to be juſt. It had been read by Mrs. *Hepburn*, Mr. *Hamilton* of *Overtoun*, and the Ducheſs of *Hamilton*. Though her Grace has forgot that ſhe ever ſaw it, it was read over to her twice by Collector *Hamilton*, and once by herſelf. It was delivered to her by the Duke, to be ſhewn to Mr. *Archibald Stuart*, on the Collector's undertaking that ſhe would return it; and her Grace talked of it herſelf to Major *Cochran:* It is wonderful ſhe forgot it. It was read to Mr. *Muir* of *Caldwell*, to Mr. *Roſs-M'Kie*, Ducheſs of *Douglas*, Lord *Dumfries*, Mr. *Douglas* of *Garrellan*, Captain *Douglas* his Son, and many others: In ſhort, Nothing could be more public.

D. P. 426. A. P. P. 311. H. —— 310. A. D. P. 418. E. —— 422. B. —— 426. A. —— 424. D. P. P. 308 F. D. P. 415. I. —— 422. E. P. P. 353. C.

If the Major pleaded the Cauſe of the Earl of *Hyndford*, that was the accidental Effect of his natural Turn to Duplicity. It is plain the Family of *Hamilton* had other Expectations from him. The good Collector, who made no Obſervation upon his aſperſing Lady *Jane* with falſe Reproach, thought he behoved to be a filthy Monſter, that would endeavour to make his Grace ſettle his Eſtate on the Earl of *Hyndford* by his Couſin Duke *Hamilton*, who had given him (Major *Cochran*) an Houſe or Land (no Matter which) near the *Abbey* on the ſame Account. The Ducheſs of *Hamilton* gave Major *Cochran* a *Clierie* (or ſevere Reproof) at *Hawkhead*, which, if her Grace had no particular Reaſon to expect other from him, would have founded ſomething odd. In ſhort, they ſeem to have diſclaimed him for no imaginable Reaſon, but becauſe they were aſhamed to own him.

—— 308. H. K. —— 508. K L.

For Mr. *Archibald Stuart*, it is ſuppoſed that the only Faults he is charged with are, the Reports he made to the Duke of Lady *Jane*'s Incapacity, pretended by the Authority of *Margaret Kerr*, and the ſwearing to the Letter which Count *Douglas* was ſuppoſed to write to the Duke.

D. P. 885. B.

For the firſt the Apology is, that he might have believed in her Incapacity, and have expreſſed himſelf ſtrongly on that Subject. Mr. *Archibald Stuart* is now dead; and while he lived, there was no Way tolerably certain of knowing what he believed: Thus much is certain, that he could not have believed *Margaret Kerr* told him what ſhe never dreamt of ſaying to any Body. *Strong Expreſſion* ſeems to be but a handſomer Phraſe for inventing and uttering a calumnious Falſehood.

His ſwearing to the Letter, which never exiſted, from Count *Douglas*, the Purſuers think referable to, and ſufficiently excuſed by this, That he took ſtrongly that Side of the Queſtion, that Lady

Jane's Delivery was an Impoſture. It ſeems when Mr. *Archibald Stuart* took a Thing *ſtrongly*, he always explained himſelf by a Falſhood: That was his Habit.

It would have been kinder to Mr. *Archibald Stuart*'s Memory to have diſclaimed him alſo, than to have defended him thus: Yet is this the fair Amount of all the Apology they make for their own Agent, the leading Enemy of Lady *Jane*, the Author and Diſperſer of thoſe Calumnies, which had no Foundation but in Rancour; no Object, but to oppreſs an only Siſter, and to defraud an Infant Nephew of his Hopes.

There is one general Argument for all their Friends, as far as they happen to be concerned in giving out the Report of the Letter from Count *Douglas*, which deſerves to be remembered, though not to be argued; it is this, That Lady *Jane* was the Author of the Report herſelf: A refined Stroke of Policy indeed, to circulate a Calumny in the World, to have the Advantage of refuting it.

This is inferred from a Paſſage in the Depoſition of Chevalier *Douglas*, who ſays narratively that Lady *Jane* ſhewed him Copies of the Letters written, as ſhe told him, by Count *Douglas*; whereas it is now admitted on all Sides, that no ſuch Letters exiſted. That which the Chevalier now calls a Copy of Letters, *&c.* was certainly in *Engliſh*, for he took it from Lady *Jane*'s Telling, not from Reading himſelf, as he would have done if they had been *French*. They were in Fact the Accounts picked up from Converſation, when Mr. *Loch* had ſent the Copies of thoſe Letters. The Purport of them was put into the Form of a Letter from Sir *John* to the Chevalier. This he undertook to tranſmit to the Count, which ſufficiently ſhews they had neither the Original nor a formal Copy to ſend him. And upon this Expreſſion of the Chevalier thus explained they infer, that Lady *Jane* had what Nobody ever ſaw, an exact Copy of this fictitious Letter.

In the mean Time, what is become of the Credit of them, for whoſe Sake this Defence was renewed? It is ſuppoſed for them, that, as ſoon as a Falſhood reproachful to Lady *Jane* ſhewed its Head in the World, they flew all three to its Support. Mr. *White*, who had good Opportunity to know the Truth, gravely aſſerts, upon all Occaſions, that he had ſeen it; Major *Cochran* attacking her with her beſt Friend, and averring, that he had read it on Occaſion of a very ſolemn Converſation in Lady *Jane*'s Behalf; and Mr. *Archibald Stuart* ſwearing to the Truth of it.

CHAP. V.

The Duke's Conduct in Conſequence of his being ſatisfied of the Aſperſions raiſed on Lady Jane *being falſe.*

THE Duke was moved with the Diſcovery of the many Falſhoods which had been impoſed upon him, to the Prejudice of his Siſter, and embarked in the Enquiry with ſome Degree of
D. P. 420. C. Activity. He cauſed a Letter to be written to Lady *Stair* on the Subject, which brought on the
—— 426. C. Explanation of Major *Cochran*'s malignant Duplicity; and that, in Conſequence of it, ſhe died in
—— 427. B. Want of common Neceſſaries. The Duke heard it with great Emotion; and both he and Lady *Stair* were in Tears. *White* was dead; *Stuart* had been formerly diſmiſſed on *White*'s Frauds being diſcovered; and the only Indignation he could expreſs againſt *Cochran*, was to forbid him the Houſe, which he did.

—— 430. B. He ſent for Mrs. *Hewit*, and expreſſed much Satisfaction in the Account ſhe gave of Lady *Jane*. One Day, after converſing with her alone, he brought her in to the Ducheſs, commended her, and expreſſed how much her Converſation about his Siſter had affected him. He aſſured the Ducheſs it would draw Tears from her Eyes, as it had from his: After which, he always ſhewed great Favour and Countenance to Mrs. *Hewit*.

—— 430. A. He alſo employed Sir *William Douglas*, a Partizan of the Family of *Hamilton*, to examine Mrs. *Glaſs*, late *Iſabel Walker*; and to converſe with Mrs. *Hepburn*: And upon the Foot of the Reports made by Sir *William*, and of his own Converſation with Mrs. *Hewit*, he ſeemed ſatisfied that the
—— 430. C. Children were really bore of Lady *Jane*.

One or two Particulars have fallen from the Witneſſes, which ſerve to ſhew, in ſome ſmall Degree, what the Impreſſion and Temper of the Duke was at that Time.

—— 412. E. Mr. *Loch* had been a Friend to Lady *Jane*, and advanced her Money. The Duke took Occaſion to allude to it. Mr. *Loch* turned it off with ſaying, the only Favour he had to aſk of his Grace, was Leave to bring Lady *Jane*'s Son to him. The Duke, not appearing averſe to it, aſked the
—— 413. A. Ducheſs what ſhe thought of it. She referred to his Pleaſure. Much other Converſation paſſed on the ſame Subject, and Mr. *Loch* thought the Duke had given him Leave to bring the Child. He carried him accordingly the next Morning; but his Grace having been out of Order, the Ducheſs thought it was an inconvenient Time to introduce him, and ſent him away. Mr. *Loch* was much

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diſſatisfied with the Ducheſs upon this, and always thought that it was not the Duke's Fault that he had not ſeen the Child.

He often converſed with Mr. *Loch* on the ſame Subject, and took from him a Paper in Lady *Jane*'s Hand, containing an Account of her Life for ſeveral Years, antecedent to her Marriage, which was read before Lord *Shewalton* and ſeveral others. He learnt from him alſo the Story of Lady *Jane*'s Diſtreſs for the Death of *Sholto*; and of the Poverty and Neglect under which ſhe died herſelf. He expreſſed himſelf ſo much affected with it, that he declared he ſhould not ſleep all Night. He ſaw that ſhe had been the moſt injured of Women; but all ſhe had ſuffered through Life did not affect him ſo much as what ſhe ſuffered at her Death. He lamented that ſhe had not only been neglected before her Death, but after. He even cried, and expreſſed his Regret for the Part he had taken in it. P. P. 361. K. D. P. 429. A.

Though theſe Expreſſions of Regret eſcaped him occaſionally, it was not the Duke's Boaſt to talk openly upon any Subject, eſpecially upon the Settlements he meant to make of his Eſtate. The Deeds of 1754 and 1757 were known in the Family; and from thoſe it appeared that he intended to devolve the Whole upon the principal Line of *Hamilton*. This he was drawn in to do, much againſt his own Idea, which was certainly averſe to merge his antient Name and Family in that of *Hamilton*. He had ſometimes thought of Lord *Douglas Hamilton*, ſometimes of Lord *Archibald*, ſometimes of Lord *Selkirk*, ſometimes of the Defender. Upon the Death of the late Duke *Hamilton*, he had apprized Lady *Charlotte Edwin*, that he meant to alter thoſe Settlements. The Letter is loſt; but the Tenor of the Expreſſion ſeems to have been, that he had now loſt his Heir, with ſome Reference to his Siſter's Son, as the Perſon upon whom the Succeſſion would devolve. That ſuch would be the Caſe under the old Inveſtiture, delivered from thoſe two Deeds, was well known: In Anſwer to which, Lady *Charlotte* was pleaſed to expreſs her Diſpleaſure, that his Eſtate ſhould go to one who had neither *Douglas* Name nor *Douglas* Blood; which by the Way is additional Proof, that while theſe Stories were moſt confidently aſſerted, the Family of *Hamilton* did not believe the Birth fictitious; or that Mr. *Douglas* could be diſappointed without expreſsly diſinheriting him. —— 434. B. —— 425. F. P. P. 311. B. D. P. 425. E.

The only Article in which he appears to have been fixed was, that it ſhould not be divided. A Doubt had been ſuggeſted, whether the Earl of *Selkirk* (claiming under Lord *Baſil Hamilton*, the fifth Son of the firſt Duke *Hamilton*) was not intitled to Part of his Fortune; and he was determined, if that had been ſo, to leave it all to him. —— 434. B.

While theſe Ideas revolved in his Mind, the Ducheſs knew no more of his Purpoſe, than (what ſhe had heard) that he meant to make Duke *Hamilton* his Heir; and what he afterwards communicated to her, that he meant to ſettle his Eſtate on Lord *Douglas*.

But his general Purpoſe of making Heirs was no Part of her Concern, which confined itſelf to two Objects. Firſt, That he ſhould make Enquiries, ſuch as might ſatisfy him, whether the Defender was really the Son of Lady *Jane* or not. Secondly, That if he ſhould find him ſo, that he would relieve Lord *Cathcart* from the Burthen of his Education, and breed him to the Army, where his Birth would be a ſufficient Recommendation. In ſhort, that he would conſider him as a younger Son, and provide for him accordingly. The ſame Sort of Application was made to his Grace by Lord *Morton*, Mr. *Hamilton*, Sir *William Douglas*, and others. D. P. 428. E. P. P. 352. E. —— 326. L. D. P. 428. F.

Sir *William Douglas*, a zealous Adherent to the Family of *Hamilton*, was wiſe enough to foreſee that the Intereſt of that Family ſtood precariouſly, while it was founded on mere Oppreſſion of an Orphan Nephew by Dint of Falſhood; and conceived, that if the Pretenſion of the latter could be ſatisfied by ſome reaſonable Proviſion for him, as a younger Son, the general Diſpoſition to the Houſe of *Hamilton* would ſtand more quiet and free from Objection. The Duke had Penetration enough to ſee through that, and anſwered his Idea rather than his Words, "You are an old dotard Fool. I will give him all or nothing." After which he played, as the Duke called it, with both Hands, adviſing the Ducheſs to preſs in his Behalf, and perſuading the Duke not to believe him the Son of his Siſter. P. P. 306. H. D. P. 898. F.

The Ducheſs fell eaſily into this Snare. She had employed the Reverend Mr. *Harper* to draw the Truth from Mrs. *Hewit*, by charging her Conſcience in the moſt ſolemn Manner. She had converſed with her and *Iſabel Walker*, and Mrs. *Hepburn*. She was ſatisfied herſelf, and thought the Duke had been ſo; and with that Warmth of Humanity and Juſtice, which does her Honour, preſſed the Duke to behave to him accordingly. —— 451. C. —— 430. A.

Mean While other intereſted Perſons were conſtantly infuſing Doubts and Suſpicions, which his Temper was exceedingly apt to receive. His Determination to give him all or none made every Jealouſy look important. On the other Hand, the Wrongs which his Siſter had ſuffered, and for which he was to blame, agitated his Mind; he grew uneaſy, he hated the Subject, and was impatient of being talked to about it. Mr. *Hamilton* had obſerved long before this, that from

P. P. 330. K. the Time he had refuſed to ſee Lady *Jane*, he was *aſhamed* to mention her Name, by Reaſon of her not getting Acceſs, though before he uſed always to aſk after her.

—— 430, B. This was the Situation of a Mind ſo uncertain and unaccountable, that thoſe who knew him beſt could not fathom it. In ſhort, as Mr. *Hamilton* told Lady *Jane*, he was to know every Day. The Ducheſs knew neither the Extent of her Application, nor the ſecret Means uſed to obſtruct it; but imagining, that he was as ſatisfied as he expreſſed of Lady *Jane*'s Innocence, and that a younger Child's Proviſion was a fit and reaſonable Thing to aſk, renewed her Sollicitations, and preſſed them in this uneaſy Temper of his Mind. When he declined to do any Thing without a viſible or imaginable Reaſon, ſhe referred it to the Greedineſs of thoſe who expected to inherit his Fortune, and reſiſted any Attempt to diminiſh the Fund; and expreſſed herſelf ſharply about them and the Settlements they had obtained.

——327. A. They, on the other Hand, were ready to put the worſt Conſtruction on all ſhe ſaid, and made the Duke believe that, out of Averſion to the Family of *Hamilton*, ſhe meant actually to deſtroy his Settlements, and ſettle the Eſtate upon Mr. *Douglas*: Whereas their own Witneſs depoſes, that all ſhe had aſked, and all the Duke had promiſed, was ſome moderate Proviſion for him as a younger Son. Conſequently, her perſiſting that ſhe would burn theſe odious Deeds, was but a Manner of ſpeaking the Language of Diſappointment, upon quite another Subject, and not the ſerious Purpoſe they made the credulous Duke ſuppoſe.

CHAP. VI.

The Duke of Douglas *revokes the Settlement in Favour of the Family of* Hamilton, *and executes an Entail of his Eſtate in Favour of the Defender.*

26 Mar. 1759. THEY were ſucceſsful, however, and brought Matters to a Quarrel and Separation in *February* 1759. Soon after which the Duke executed a Deed reciting a former, whereby he had ſettled an Annuity of 600 *l.* a Year upon her, reciting alſo his firm Purpoſe never to cohabit with her again; and ſettling upon her 1500 *l.* a Year after his Death, in Lieu of the 600 *l.* which ſhe took by the former Deed, and in Bar of Dower and Thirds; ordering that one Copy of this ſaid Inſtrument ſhould be tendered and delivered to the Ducheſs, the other to be kept by himſelf.

The Duke was perſuaded by thoſe in whoſe Poſſeſſion he then was to offer her by this Deed much leſs than Half of what ſhe would have been intitled to without it. The Ducheſs, who deſpiſed Money, thought it a nobler and worthier Part to take 1500 *l.* a Year from the Duke, than to claim 4000 *l.* a Year againſt him, and accepted the Deed.

This Separation was, in Diſappointment to the Authors of it, a lucky Event, both to the Ducheſs and Mr. *Douglas*. The Duke was, from his Temper, more capable of forming proper Reflections for himſelf, than of being driven into them by others. The Conduct of the Ducheſs in accepting this Deed from him, confirmed him in what he never had Reaſon to doubt, that nothing could be more *diſintereſted* than her Sollicitations had been. The more he reflected upon the Story of Lady *Jane*, the more Reaſon he ſaw to believe in it, and conſequently to obſerve the *Reaſonableneſs* of ſuch Sollicitation. He felt Remorſe too late for his Treatment of Lady *Jane*. It was not too late to repent his Behaviour to the Ducheſs. Being no longer *peſtered*, as he calls it, he came to himſelf, and ſought a Reconciliation.

6 Aug. 1759. It took Place, and he executed another Settlement, whereby he gave the Ducheſs 1000 *l.* a Year inſtead of the 1500 *l.* and limited his Eſtate to the following Uſes, *viz.*

1ſt. The Heirs Male of that Marriage.

2dly. The Heirs Male of his Body.

3dly. Heirs Female of that Marriage in Succeſſion, and not as Portioners.

4thly. Heirs which he *hath* or *ſhall* appoint.

5thly. His own right Heirs.

The fourth Limitation ſhews the Object which his own Ideas recurred to when he was not peſtered, and manifeſts that his *Reconciliation* turned upon the Change of his Opinion concerning the Subject of their *Difference*: And this is further proved by what happened immediately after.

1 Sept. 1759. In the Beginning of the next Month, the Duke ſent to *Andrew Chalmer* (*his* Doer, as he ſuppoſed, becauſe he paid him for being ſo) for the Deeds of 1754 and 1757.

3 Sept. 1759. In Anſwer to which the *Doer* declining to deliver him his own Deeds, declining even to wait upon him with any Apology for a Behaviour ſo extraordinary, is made to ſend him two ſuch Letters as never paſſed before from a Servant to a Maſter.

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In the firſt, he tells the Duke "*Certain Points* had occurred relating to them *(viz.* the Duke's "*own* Deeds in *his* Cuſtody) which I conſider as *Objections* or *Difficulties* to my *delivering* them to "your Grace *haſtily* or *ſpeedily*. Theſe I have ſet forth in Writing, by a Letter to your Grace, to "be delivered and explained by Lord *Shewalton*."

The Letter ſo to be delivered and explained ſays, That delivering the Duke his own Papers "requires Precautions, for which *now* there will not be Time before the Day *ſet for taking that* "*Journey which my Phyſician has declared neceſſary for my Health*." In the mean Time, he promiſes the Duke Copies, *viz.* of his own Papers. He proceeds to warn the Duke, that deſtroying the Deeds demanded will be the ſame Thing to Lady *Jane*'s Son as making a Deed in his Favour. Here is another Proof what Faith the Friends of the *Hamiltons* gave to their own confident Outcry of Impoſture. He continues, "As the Copies will be quite ſufficient for your Grace's Purpoſe, "ſo they will be uſeful in Caſe your Grace ſhould take the Originals, becauſe I ſhould wiſh to "ſhew the World what they were." Why ſo? The Duke ſent for his own Deeds, which were revocable and teſtamentary. What Buſineſs had *Andrew Chalmer* his *Doer*, to *wiſh* about them? And what Right to ſhew them to the World againſt the Duke's Conſent? He concludes, "I have "obtained the Favour of Lord *Shewalton* to deliver this to your Grace, that I may be ſure of your "reading it, or hearing it read; and I keep a Copy by me *to give in Evidence*."

If it be impoſſible, that any Servant ſhould write thus to his Maſter, without being corrupted to betray and inſult him, it will afford another Proof of the Arts whereby the Duke was incenſed; and of the real Opinion thoſe had of Mr. *Douglas*'s Birth, who reſorted to ſuch Means of ſupplanting him.

The phlegmatick Inſolence of this Fellow ſo far alarmed the Duke, that he reſorted to Counſel to learn how he might regain the Poſſeſſion of his own teſtamentary Papers, and in the mean Time ſtooped to offer him a Receit for them.

The Counſel adviſed Proceſs of Exhibition; whereupon *Chalmer* had the perſevering Impudence to ſend the Duke an Inventory and Docquet, and Duplicates of the Deeds, with Docquets upon them alſo, requiring them to be ſigned, as the Condition of his delivering up the Originals.

The Duke was adviſed to take the tame Part of *only* refuſing to ſign the Duplicates, and of repeating the Offer of a Receit; whereupon his Servant, having played the whole Game, condeſcended to deliver him up his Deeds.

After ſo much Trouble to get the Deeds into his Poſſeſſion, the Duke, with his own Hand, cut off the Signature, and indorſed a Memorandum on them, in the Form given him by Mr. *Brown* on a former Occaſion. "*Edinburgh*, 5th *January* 1760, It is my Will, that the within "Deed be of no Effect; and, therefore, I revoke the ſame, and have cancelled it." This is in the Hand of *Inglis*, his Secretary, and was ſigned by the Duke himſelf. 5 Jan. 1760.

That the Duke's Conviction of Lady *Jane*'s Innocence was, in Truth, the Source and Occaſion of his Reconciliation to the Ducheſs, farther appears in this, That from that Time he expreſſed himſelf invariably in Terms of Regard for his Siſter and Nephew. The only Witneſs produced by the Purſuers to the contrary is Mr. *Hamilton*, who ſays, that his Grace continued in the Opinion that the Children were ſuppoſititious, *ſo far as he had Occaſion to hear*, till near his Death. In Truth, this Gentleman had little Occaſion to hear, for he never ſaw the Duke for two Years before his Death.

But the ſtrongeſt Aſſurance, which, no doubt, remains upon this Part of this Caſe is, that the Purſuers have argued, that the Duke could not mean his general Heirs (according to the common Acceptation of the Words, Heirs and Aſſignees whatever), in the Deed of the 6th of *Auguſt* 1759, becauſe he knew, that Mr. *Douglas* was his Heir-general, and he had manifeſted a Purpoſe to diſinherit him by a Deed then ſubſiſting. Mem. for the Duke of Hamilton, 8 Jan. 1762. p. 43. 15 Apr. 1762, p. 7. 74. 88.

In the Summer 1760, the Duke told Mrs. *Hepburn*, that he had cancelled the Deeds of 1754 and 1757, and that his Nephew was to be his Heir.

1760.

The Duke ordered Mr. *Brown*, his Doer, to lay this Settlement before Counſel, and take an Opinion of his Eſtate, and his Powers over it; which is a farther Confirmation, that he meant to conſtitute another Succeſſion. 22 July, 1760.

From the ſame Period alſo, the Duke obſerved particular Kindneſs and Attention to Mrs. *Hewit*, in a Variety of little Inſtances, mentioned by the Witneſſes; and recommended her to the Ducheſs as an honeſt Woman, aſſuring her, that her Story would draw Tears from her Eyes, as it had from his.

He often ſpoke of his Siſter with great Affection, and complained, that the worſt Thing *White* had ever done to him, was hindering him from ſeeing his Siſter and her Bairns when ſhe came to ſee him.

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In lamenting his own hard Behaviour to Lady *Jane*, he mentioned *White*, *Stuart*, and *Cochran*, as the principal Authors of that Miſchief, and reflected upon Duke *Hamilton* for not ſeeing her, for which that reſpectable Gentleman pretended to have the Duke of *Douglas*'s Commands. But he added, that if he had injured her, he had made it up to her Son, by giving him his whole Eſtate.

21 July, 1761. The Duke executed a general Settlement of his Eſtate in Favour,

1ſt. Of himſelf and the Heirs whatſoever of his Body.

2dly. The Heirs whatſoever of his Father.

3dly. Lord *Douglas Hamilton*, and his Heirs Male of Body, with other Remainders over.

At the ſame Time, he executed a Nomination of Tutors to Mr. *Douglas*, and afterwards often recommended him to the Care and Protection of the Ducheſs of *Douglas*.

This is the general Hiſtory of the Eſtate of *Douglas*, and more eſpecially of the Settlements made by the late Duke; from which laſt it appears, 1ſt. That the Reports which were originally raiſed to the Prejudice of Mr. *Douglas*, were merely ſuch Falſhoods as were invented to deceive the Duke, and draw from him Settlements in Favour of the late Duke of *Hamilton*. 2dly. That the Diſinheriſon of Mr. *Douglas* was owing ſolely to that Deceit. 3dly. That upon being perfectly ſatisfied of the Fraud which had been practiſed upon him, the Duke cancelled the Deeds he had been drawn in to ſign, and replaced Mr. *Douglas* in his Line of Succeſſion.

21 July, 1761. The Duke of *Douglas* died.

CHAP. VII.

Mr. Douglas *ſerved Heir to his Uncle, and was preferred to the Eſtate by the unanimous Decree of the Court of Seſſion.*

9 Sept. MR. *Douglas* was ſerved Heir of Tail and Proviſion in General to the Duke his Uncle.

10 Dec. 1761. Charter paſſed accordingly.

17 Dec. 1761. He was infeoffed in the Eſtate of *Douglas*.

1 Dec. 1761. The Duke *Hamilton* was ſerved neareſt Heir Male to the Duke of *Douglas*.

The Duke of *Hamilton* and the Earl of *Selkirk* alſo purchaſed Writs, to be ſerved Heirs in Special to the late Duke, and brought Actions of Reduction and Declarator to ſet aſide the Title of Mr. *Douglas* to the Earldom of *Angus* and *Douglas*, and the Lands of *Dundee*. To the Duke's own Purchaſes Mr. *Douglas* was admitted to have a clear Title.

Mr. *Douglas* oppoſed their Services as ſpecial Heirs, and the whole Competition was referred by the Macers to the Court of Seſſion.

Mr. *Douglas* claimed under the Deed of 1697, and the Uſes declared thereon, on the 11th of *March* 1699, ratified by the Deed of the 28th of *October* following, and under the Limitation in thoſe Deeds to Heirs Female of the Marquis his Grandfather.

This he ſaid was the Title referred to in the Charter of 1707; and conſequently, that under which the late Duke held.

All the Settlements which the Duke himſelf had executed having been cancelled, he further contended, that under the Deed of 1759, he had a Right to claim as Heir whatſoever, the laſt Limitation in that Deed, unleſs the Deed of 1761 ſhould be thought an Appointment of Heirs, under the third Limitation of the Deed of 1759. In which Caſe he claimed under the ſecond Limitation of that Deed of 1761.

The Earl of *Selkirk* claimed under the Deed of the 9th of *March* 1699, whereby failing Male Heirs of Marquis *James*, the whole Eſtate was limited to him.

The Duke of *Hamilton* claimed as Heir Male to Marquis *William*, 1. Under the Limitation to Heirs Male in the Deed of 1630, which he inſiſted could not be altered in Law, and was not altered in Fact, becauſe the Deeds above mentioned of 1630, and 1699, were obtained from Marquis *James* by Fraud and Concuſſion. 2. The Feoffment of 1707, he ſaid, was void in Point of Form, but if Good, muſt be interpreted with Reference to the real Title, which was Tail Male under the aforeſaid Deed of 1630. 3. He inſiſted alſo, that the Deed of 1744, was not ſimply a Revocation, but a Settlement *de novo*, according to the antient Inveſtitures of the Family under

under which he claimed. 4. He inſiſted, moreover, that the Words *Heirs and Aſſigns whatſoever* in the Deed of 1759, muſt mean Heirs Male; becauſe if they meant Heirs general, the Duke muſt know that Mr. *Douglas* would be called by them; and it were abſurd to ſuppoſe, that he meant to call him by the Deed of 1759; when there exiſted at the ſame Time the Deed of 1757, which directly excluded him. 5. And to the Deed of the 11th of *July* 1761, he objected Death-Bed.

To both theſe Claims Mr. *Douglas* replied, 1. That Marquis *James* was not diſabled by the Deed of 1630, from diſpoſing the Family Eſtate. 2. That the Deed of the 9th of *March*, and 15th of *June* 1699, under which the Earl of *Selkirk* claimed, were fraudulent in the Manner of obtaining them, void as ſlowing *à non habente*, and incompetent to declare the Uſes of the Deed of 1697, to which they did not refer, and which were aptly declared by the Deed of the 11th of *March*. 3. That the Feoffment of 1707 was regular in Point of Form, and in Point of Conſtruction referred to the Deed of 1699, and the Uſes declared in the Deed of the 11th of *March* 1699. 4. That both Preſcriptions, poſitive and negative, had run againſt both Claims by the Poſſeſſion which the late Duke had under the Feoffment of 1707. 5. That the Words *Heirs and Aſſigns*, in the Deed of 1759, muſt have their general Signification, and apply to himſelf, eſpecially as the other Titles, to which they were ſuppoſed to refer, were gone long before. Laſtly, That the Death-bed Deed was not reducible but by the Heir of Line; wherefore that Objection was not competent to either of the other Claimants.—Whereupon the following Interlocutor was pronounced: "Having conſidered the Brieves, purchaſed from the *Chancery* by the Duke of "*Hamilton* and the Earl of *Selkirk*, for ſerving themſelves Heirs in Special to the deceaſed *Archibald* "Duke of *Douglas*, with the Proceſs of Reduction and Declarator, at their Inſtance; the Caſes Dec. 9, 1762. "given in for them and for *Archibald Douglas*, Eſq; and heard Parties Procurators thereon; and "having alſo conſidered the Informations, Condeſcendences given in for the Duke of *Hamilton* "and Earl of *Selkirk*; Memorials on the ſaid Condeſcendences for the ſeveral Parties; Replies "for the Duke of *Hamilton*, and Duplies for *Archibald Douglas*; and whole Writs produced; "they find, that neither the Clauſe of Return or Subſtitution, nor the prohibitory Clauſe in "the Contract of Marriage 1630, diſabled Marquis *James* from gratuitouſly altering the Order "of Succeſſion, appointed by the ſaid Contract. Alſo find, that the Duke of *Hamilton*'s Claim, "founded on the ſaid Clauſe of Return and prohibitory Clauſe, is cut off by the negative Pre"ſcription; and alſo by the poſitive Preſcription upon the Title of the Charter and Infeftment, "*anno* 1698, and Poſſeſſion thereon; find the Deed of Nomination, the 11th of *March*, *anno* "1699, ratified by the ſubſequent Deed, dated the 28th of *October* 1699, is the Nomination re"ferred to in the Charter, *anno* 1707; and that the Earl of *Selkirk*'s Claim, founded on the "Deed executed by the Marquis on the 9th of *March* 1699, and the Deed, the 15th Day of *June* "following, relative thereto, is loſt by the negative Preſcription: Repel the Objection to the "Seiſin, *anno* 1707; and find, that the Charter and Seiſin, *anno* 1707, and Poſſeſſion of the "late Duke following thereon, intitles *Archibald Douglas* to the Benefit of the poſitive Pre"ſcription, againſt the Conditions and Reſtrictions contained in the Contract of Marriage, *anno* "1630, and in the Deed dated the 9th of *March* 1699. Find, that the Deed of Revocation, "*anno* 1744, was no legal or proper Settlement of the Lands and Eſtate belonging to the late "Duke of *Douglas*. Find, that from the legal Import of the Clauſe, *Heirs and Aſſignees* what"ſomever, in the late Duke of *Douglas*'s Contract of Marriage, dated in the Year 1759, *Archi*"*bald Douglas*, as Heir of Line, is called to ſucceed to the ſaid Duke in his whole Eſtate, in"cluding the Baronies of *Bothwell* and *Wandell*. And find, that the parole Evidence, offered "by the Duke of *Hamilton* and the Earl of *Selkirk*, to the Effect of giving a different Meaning to "the ſaid Clauſe, is not competent. And alſo find, that it is not competent to the Duke of "*Hamilton* or Earl of *Selkirk* to object Death-bed to the late Duke's Diſpoſition, of the 11th of "*July* 1761, as they are not called to the Succeſſion by the laſt feudal Inveſtiture, *anno* 1707, "nor by the Contract of Marriage 1759. Therefore repels the Reaſons of Reduction, proponed "for the Duke of *Hamilton* and Earl of *Selkirk*, and aſſoilzie *Archibald Douglas* from the Re"ductions and Declarators carried on by them, and decern. And find, that the Brieves, iſſued "forth of the *Chancery*, at the Inſtance of the Duke of *Hamilton* and Earl of *Selkirk*, for ſerving "them Heirs in Special to the late Duke of *Douglas*, cannot proceed, and remit to the Macers "to diſmiſs the ſame accordingly."

PART I. BOOK II.

Of the Conduct of the Purſuers in the Reduction, &c. of the Service of Mr. DOUGLAS, as Heir in ſpecial to his Uncle.

CHAP. I.

Of the Motives of the Purſuers.

IT has been ſaid before, that Mr. *Douglas* has much to complain of the ſingular Injuſtice with which this Action has been carried on, inſomuch that (to adopt that Language which the Purſuers call the Voice of the Many, the Tide of popular Clamour) "Their Conduct is "conſidered as the Effect of a Plot, formed from the Beginning to turn the Defender out of "his Birth-right, by any Means, right or wrong."

Sequel to Mem. p. 2.

Againſt this Charge of what *they* call an infamous Combination, it is alledged, that their *Motives* muſt have been juſt. "It is not poſſible to conceive any *Motive* that could actuate the "Tutors of the Duke of *Hamilton*, but a Senſe of *Duty to their Pupil.*" But "*Their Duty to* "*their Pupil* did not call upon them to endeavour to prove an Impoſture, if there was no Foun-"dation for it."

After ſtating their real Motive, and placing the Teſt of their Conduct there, they proceed very anxiouſly to inſiſt for the Tutors of the Duke of *Hamilton* (ſtill ſpeaking of them in general); "That their own perſonal Advantage was in no Meaſure concerned in depriving the De-"fender of his State;" and they will not allow it to be credible, "That they ſhould have "formed a Plan to prove an Impoſture, where there was none; the neceſſary Conſequences of "which would be, to *involve their Pupil* and themſelves in a tedious and *expenſive Law-ſuit*; to "run the *Hazard* of his *Diſapprobation* when he became of Age; and to *expoſe* their own Cha-"racters and Conduct to *publick Reproach*, without any Proſpect of their own Advantage."

From all which they infer, 1ſt. That what they call their real Motive did not prompt them to the Miſconduct they are taxed with. 2dly. That they had no other Motive to act upon, after which they deſire to have it thought *improbable*, that they ſhould have miſconducted themſelves.

That this Queſtion upon their Conduct may, at leaſt, be tried by *Facts*, (without any Idea of Improbability bearing againſt them, if not with ſome Degree of Probability in Favour of the Aplication which is to be made of them) it may be fit to conſider, 1ſt. with reſpect to *all* the Duke of *Hamilton*'s Tutors, whether they really acted upon the Motive pretended for them, but which, it is believed, few of them will pretend. And, 2dly, with regard to Individuals, whether the Proſpect of Advantage, or ſome other Proſpect, equally bad, may not be fairly imputed to them.

The Motive pretended for them is Duty to their Pupil the Duke of *Hamilton*.

Whether their Plan was to prove an Impoſture with Truth or againſt it, the actual Conſequence has been the ſame, and juſt what they have ſuppoſed it neceſſarily muſt be, 1. To involve their Pupil, or, as it is rather hoped, themſelves in a tedious and expenſive Law-Suit. 2. To run the Hazard of his Diſapprobation when he ſhall come of Age; and a very preſſing and imminent Hazard too, if the Duke has a Friend in the World to hinder his being ſurpriſed into an Approbation when he ſhall come of Age. 3. To expoſe their own Conduct and Characters to publick Reproach, which will inevitably follow ſuch Miſconduct, whatever Courts of Juſtice may decide of the reſt of the Cauſe.

The very Expence of this Law-Suit, enormous as it is known to be, and oppreſſive to the Duke's Fortune, as it appears to be from the viſible Situation of that Fortune, and from the Petition for Sale of the Minor's Eſtate, preferred in the Year 1764: This very Expence is a full Anſwer to the Pretence of Duty to their Pupil, unleſs they can demonſtrate that he has an *Intereſt* in the Queſtion ſufficient to warrant ſo amazing an Expenditure of his Money.

The Nature and Extent of the Claim made for the Duke of *Hamilton* upon the Eſtate left by the late Duke of *Douglas*, has been fully explained already. He pretends no Title to the Perſonality, for he is not next of Blood---nor to the Purchaſes made by the late Duke, for he is not next Heir.---

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He claims, as Heir Male to Marquis *William*, the Great-grandfather of the late Duke; and in that Character competes with Mr. *Douglas* (at that Time acknowledged the neareſt Heir-general). It is now confeſſed, by the Form of this Proceſs, in which the Duke joins and co-operates with Sir *Hew Dalrymple*, that if Mr. *Douglas* were dead, or otherwiſe extinguiſhed, there would ſtill remain many different Heirs-general, with whom the ſame Competition muſt proceed, under the hopeleſs Circumſtance of an unanimous Judgment againſt him, by a full Court, with the full Approbation of the *Scottiſh* Bar.

The firſt Article, therefore, of the Minor Duke's Intereſt in this Action of Reduction is *that Claim*, ſo perfectly reprobated as to be extinct in *Effect*, though it lives by Means of a reclaiming Petition in *Form*. The other Article of Intereſt which he takes in this Action is, the important Object of changing the *Perſon* of his Competitor in that hopeleſs, extinguiſhed Claim, without changing the *Queſtion*. The whole Claim, for the Sake of which he maintains this Reduction, is gone. If it ſubſiſted, the Event of this Reduction (whatever it may be) would not vary that Claim an Iota, for the Better or for the Worſe. But as the *Form* of that Claim ſtill ſubſiſts, *Form* gives the Tutors of Duke *Hamilton* a *Title* to inſiſt in this Action, and a *Pretence* to ſpend their Pupil's Money upon it:—How ſolid a Pretence, is a Matter to be diſcuſſed between Pupil and Tutors, if the Duke ſhould be well adviſed.

Such is the Duke's Intereſt in this Suit: That Intereſt which alone could make it Matter of Duty for his Tutors to interpoſe in it: That Intereſt without which the Expence made in this Law-Suit is unwarranted and unrighteous Profuſion. Which of theſe Titles it deſerves, the bare State of the Caſe demonſtrates.

Unfortunately Lord *Douglas Hamilton* had the ſame Tutors with his Brother the Duke.

Lord *Douglas* claims (as has been ſeen) an Eſtate in Tail Male, under the third Limitation in the Deed of the 11th of *July* 1761; that Deed upon which Mr. *Douglas* made up his Title, and was ſerved Heir under the ſecond Limitation: And this was done out of pious and decent Regard to the laſt Will of his Uncle. To this whole Deed, the Tutors of the Duke of *Hamilton* and the Earl of *Selkirk* objected *Malum Lecti*. The Court of Seſſion repelled the Objection in *their* Mouths; "They not being Heirs of Line, nor called to the Succeſſion by the laſt feudal Inveſtitures of the "Eſtate in 1707, nor by the Marriage-Contract 1759." And the Opinion which the Purſuers entertain of this Objection, may be ſeen in their firſt *Plainte* to the *Tournelle*; wherein they ſtate that the Succeſſion devolved upon the Duke of *Hamilton*, "Chef de la Maiſon, & qui doit en "réunir les *Titres* & les *Honneurs*;" and upon Sir *Hew Dalrymple*, "qui a pareillement *des* "*Droits* ſur cette Succeſſion."

The only End attainable by Lord *Douglas Hamilton* in this Action of Reduction is, to raiſe up ſome Heirs of Line in whoſe Mouth the Objection is to be competent; which muſt reſcind the only Title under which he has any Claim whatever to the Eſtate of the late Duke of *Douglas*, and which it is evident they would immediately proſecute.

If the *Intereſt* which this Pupil has in the preſent Action is to decide upon the *Duty* and *good Faith* of his Tutors, the Account will ſtand thus:

If Mr. *Douglas* ſhould ſucceed *ut potius reor & potius Dii numine firment*, Lord *Douglas* will remain juſt where he would have been if he had never embarked in this Proceeding, entitled to take the Eſtate under the Deed of the 11th of *July* 1761, upon the Death of Mr. *Douglas* without leaving Iſſue.

If Mr. *Douglas* ſhould fail in this Action, his Tutors will be anſwerable, in Conſcience at leaſt, not only for what his Chance of ſucceeding under the abovementioned Entail is now worth, but for what it was worth to be ſold in the Year 1762.

Such is the Intereſt of Lord *Douglas* in this Law-Suit, and ſuch the exact Amount of the *Duty* which called upon *his* Tutors to bear a Share in this Action, wherein their Pupil's Title to ſue ſtands altogether upon that Deed which this very Action aims to render a Nullity.

On the 7th of *December* 1762, theſe Minors raiſed Proceſs of Reduction; foreſeeing, perhaps, that ſuch unſubſtantial Titles might at leaſt bear a Queſtion.—Two Months thereafter Sir *Hugh Dalrymple*, one of the numerous Heirs of Line, was aſſociated, in order to raiſe him into the Poſture of claiming a *decided* Title againſt the Duke, and of reſcinding the now *ſubſiſting*, but the *only* Title of Lord *Douglas*.

This ſhort Narrative, it is believed, will afford a ſufficient Reaſon for reſorting to ſome other Motive to explain the Conduct of Duke *Hamilton*'s Tutors than Duty to their Pupil; and as far as the Probability of their having acted fairly depends upon the Motives aſſigned for them, there is an End of any ſuch Probability.

Perhaps, in the Sequel, there will be Room to ſuſpect, at leaſt, ſome other Motive, not leading to any ſuch Probability.

It is ſaid for the Tutors of the Duke of *Hamilton*, that they acted without any Proſpect of their own Advantage. Is Revenge nothing?—was a Reflection actually made on this very Subject, and which ſhould have been proved, if ſuch Apology for the Conduct of the Purſuers had been foreſeen. It was this ſame Spirit which tried before to circumvent him by more adequate Means, when one of the Tutors of the Duke of *Hamilton*, confederating with a Servant and another Dependant, tried to impoſe upon the Duke, a recluſe Man, Falſhoods invented by himſelf; and privately drew from his Grace Deeds to diſinherit an Infant Heir, upon Suggeſtions which would not bear the Light. It was this ſame Spirit, which, foiled in that Attempt, prompted them to inſtitute a Suit for carrying off the ancient Family Eſtate. This ſame Spirit, diſappointed there, alſo reſorted to the preſent Suit; "not with the Proſpect of any Advantage," it muſt be confeſſed, to their Pupil, or to more than one of themſelves; not with the Hope of gaining, but to wreak the Malice of Diſappointment upon an Infant who had never offended them; which, if not Victory, "is yet Revenge." They could not rob him of his Fortune, but they could torment him for ſome Years, at leaſt, in the Poſſeſſion of it. They cannot deprive him of his State, but they can involve it in tedious Calumnies, which require Attention and Impartiality to diſſipate.

Is it, at the ſame Time, a clear Propoſition, That none of the Tutors of Duke *Hamilton* have acted with any Proſpect of Advantage? It is pretty obvious how one of them *may* have drawn Advantages from it, and, conſequently, more than probable that he *has*. But this Idea will not reſt on mere Probability, when it ſhall be ſeen that one of them purſued his Father's Plan ſo far as to deceive his own Employers; and for that End, to deceive his own Counſel, by artfully miſrepreſenting the Caſe to them. For, to do Juſtice to thoſe Gentlemen who ſtand for the Duke of *Hamilton*, it is not believed they would have embarked in this Buſineſs, if they had foreſeen how far it would have run into Length and Expence; nor, perhaps, if they had underſtood how wide they acted of the Intereſt of one Pupil, and how contrary to that of another.

It revolts one to imagine, without being compelled to do ſo, that any Set of Men would embark in a Plan of Miſchief purely for the Love of it; and yet what elſe can Candour itſelf make of the Conduct of the Purſuers, without referring to their Ignorance of what they went about?—It is more difficult ſtill to imagine, that they would attempt ſuch idle Miſchief with the Certainty of incurring great Expence and Trouble; and yet it is plain they have done ſo, unleſs the Bargain which has been ſo much talked of has actually been ſtruck between them and Sir *Hew Dalrymple*, and the other Heirs of Line; by Means of which they will, on a certain Event, be indemnified for the unjuſt Part they take of *maintaining* another Man's Suit.

The Fact, however, is manifeſt, *beſide* the Intereſt of one Pupil, and directly *againſt* that of another, they ſtand forward in a Cauſe wherein they have no Concern, at an Expence, the fortieth Part of which Parties ſo perfectly unintereſted never made in a Law-Suit before. Let it be ſeen how far the reſt of their Conduct correſponds with this Outſet.

CHAP. II.

Of Mr. Andrew Stuart's *Enquiries, whereupon this Action of Reduction was inſtituted.*

AT the End of fourteen Years from the Birth of Mr. *Douglas*, after a Poſſeſſion during that Time unimpeached, but by Reports which the Tutor of the Duke of *Hamilton*, who raiſed them, knew, conſequently, to be falſe; after their Diſappointment in a former Cauſe, wherein they ſolemnly acknowledged the Truth of Mr. *Douglas*'s Birth, nay, made the Notoriety of that Truth the Foundation of their Plea; beaten out of every Ground which imported the ſmalleſt Advantage to their Pupil, they recur to a Plan of Revenge upon the Infant; offended that the Juſtice of his Cauſe prevailed in the Competition; and ſend over another Tutor (Son of the former, who has been mentioned ſo often) to canvaſs *Paris* for Evidence againſt the Fact they had acknowledged and pleaded upon.

Seq. to P. Mem. p. 3. This Conduct, they ſay, was exactly right in all its Parts. It was *right* to delay the Enquiry, becauſe during the Duke's Life they had neither *Title* nor *Intereſt* to proſecute. It was *impoſſible* to begin ſooner, with any Hopes of Succeſs, becauſe before the Service, they had not the Materials to proceed upon, the *Perſons*, *Time*, and *Place*, of the Delivery. The Moment theſe were diſcovered, they were apprehenſive of being thought *negligent* if they ſhould omit it; whereupon they were anxious to ſend over a *Man of Character*, who was *prejudiced* that Facts would turn out as ſet forth in the Service. All which happens to be perfectly groundleſs.

——— p. 4.

——— p. 5.

That they had no *Intereſt* to proſecute, would be a better Apology in any Mouths than theirs, who are now proſecuting without *Intereſt*. They had an *Intereſt*, it ſeems, to defame his Birth in the Dark; but none to proſecute againſt it in open Day. Their Title alſo to proſecute is *now* merely

merely *formal*; and it would have been eaſy enough to make out *ſuch* a Title in the Year 1748, if this open Way of Proſecuting had happened to be their *Intereſt* at that Time. At that Time alſo, they might have proceeded with many Advantages: Lady *Jane* was ſtripped of her Subſiſtence; the Family was undone; thoſe whom the Duke of *Douglas* has ſince charged with the Protection of his Nephew, were then called upon by no ſuch Duty to defend him. Lady *Jane*'s Truth and Innocence were her only Support; and thoſe who attacked her Truth and Innocence in the Dark, will not pretend to have been hindered, by Remorſe or Generoſity, from attacking in broad Day.

It is more likely, as they ſay in the ſecond Place, that They thought it impoſſible to attempt it with any Hope of Succeſs. Thoſe *Prejudices* (under which Mr. *Andrew Stuart* went to canvaſs for Evidence at *Paris*), "that the Facts would turn out as they were ſet forth in "the Service," operated more ſtrongly while all the Witneſſes referred to were alive, than they did fourteen Years after, when many of the moſt material were dead. It is wonderfully perverſe to put the Difficulty of enquiring before upon the Want of Materials, when, upon other Occaſions, they complain that they were miſled by thoſe very Materials, and retarded in their Purſuits; and when, in Fact, all thoſe Materials were public, and in Converſation, from the Time of Lady *Jane*'s coming over to *Britain*. If there had been a Spark of open Dealing *then*, her Truth would have come out, clear of all Ambiguity or Suſpicion. Her Truth or her Falſhood muſt have done ſo. Inſtead of which, the Project was to intercept her from converſing with her Brother, or any other conſiderable Friend, and ſo ruin her behind her Back. And now they fling themſelves upon this abſurd Apology for delaying their open Attack fourteen Years.

However, after ſo *fair* an Occaſion, and ſo *clear* a Title opened, they were awakened by Suſpicions of fourteen Years old, and proceeded *forthwith* to make Enquiries, for Fear of being thought *negligent*. Their Notion of a Tutor's *Negligence* is as hard to comprehend as that of his *Duty*; ſeeing both turn upon Articles in which the Pupil has no Concern. Their Conſtruction of the Word *forthwith* is left ſomewhat ſhort, ſuppoſing it to include thirteen Years, the Period between the Birth and the Service. If even then they had ſeen any Hope of Succeſs, or Proſpect of Utility, after conteſting the Service Inch by Inch, they ſhould immediately have proceeded to reduce it, inſtead of acknowledging the Truth found by that Jury and pleading upon it. But they never thought of this Reſort till that Cauſe was going againſt them; and they made towards it when it became ſtill more apparent, if poſſible, that it could be of no poſſible Uſe to their Pupil.

This, therefore, was their real Situation, when they ſent over *a Man of Character* to make Enquiries he was prejudiced againſt. Mr. *Andrew Stuart*'s Character was, at that Time, involved in Mr. *Archibald*'s; he had been ſeen in no other Capacity than as Aſſiſtant to his Father. How much his Conduct in this Buſineſs has raiſed it, will appear hereafter. For Mr. *Archibald* there is not a Word of Apology, though much Evidence has been given in this Cauſe, which would have made an Obſervation or two on that Head very pertinent. Mr. *Andrew* has ſaid for himſelf forty Times in his Memorial, that his Character is excellent and his Conduct irreproachable. If Mr. *Andrew Stuart* had not fallen into the miſtaken Vanity of holding his own Name forward as a Topic of Argument againſt Mr. *Douglas*, it might have eſcaped with leſs Notice; and that might have been of ſome Advantage to it. But it is inſiſted for the Purſuers, that Mr. *Andrew Stuart*'s Character does not afford one Shade of Probability againſt him. Whether it acts in that Manner had better be ſhewn by Inſtances, than taken in their Way, upon general Aſſertions.

CHAP. III.

Of Mr. Andrew Stuart's *Conduct in making Enquiries at* Paris.

THE Plan upon which Mr. *Andrew Stuart* ſet out with in this Expedition to *Paris*, was that of the cloſeſt Secrecy; a Plan which, in one and the ſame Section of his Memorial, he avows as proper, and diſclaims as aſhamed of. Sec. §. 2.

This extraordinary Secrecy looks, at firſt Sight, as if it could be meant for Nothing but to preoccupy, at leaſt, the Witneſſes, and garble their Teſtimony; as it could lead to no Advantage but that unfair one, to ſurprize the Defender, to ſurround him with a long Caſe of fraudulent Imputation, and to cut him off from the Opportunity of meeting it with other Evidence.

Mr. *Andrew Stuart* ſays, he was *conſcious* of meaning fairly; and that ſtands as his Apology for acting as if he meant otherwiſe. If the Story were true it would not ſuffer, becauſe he was *conſcious* of intending a fair Enquiry. To which it is anſwered, very calmly and ſeriouſly, That Mr. *Andrew Stuart* is not believed upon that Subject; nor has he any Right to be believed. For, apart from what actually happened in Conſequence of this Secrecy, no Man has a Right to act

underhand, and call upon his adverſe Party to put Confidence in him. Leaſt of all, ſhould Mr. *Andrew Stuart* pretend ſuch a Right, who proceeds to argue thus: "If the Story were an Impoſture, "there could be no Doubt but the Authors would be as little ſcrupulous in ſupporting it, as they "had been in inventing the Falſhood." He who went over with the Belief that the Story was true, aſſumes the Falſhood of it as the Juſtification of his very firſt Step. And whom did he ſuſpect of ſupporting this Impoſture profeſſedly? Mrs. *Hewit*, who knew nothing of the Country or Language of *France*? Sir *John Stewart*, broken with Infirmity and Age, who never could have weaved or maintained a Plan of Impoſture? Wretched Subterfuge! Thoſe were the very People he would have converſed with, if fair Dealing had made any Part of his Plan. Whom did he tacitly mean to inſult with the Reproach of having leſs Honour than himſelf? The Tutors of Mr. *Douglas*? It is dragging down their Names too low, to bring them into Compariſon with his.

Seq. p. 6.

This being all Mr. *Andrew Stuart*'s Apology for what he did, no Wonder he denies, and declares poſitively, "That though concealing his Intention was moſt prudent and proper," his Intention was communicated to a Variety of Perſons of the firſt Rank and Character, as well as to many of his particular Friends in *London*: And Mr. *Stuart* even wrote of his Intention to ſome of his Correſpondents in *Scotland*. What theſe various Channels of free Communication were, he is pleaſed to keep a Secret. By the firſt, perhaps, he means his Employers; by the ſecond, the Agents in *London*; by the third, thoſe in *Scotland*. But his Exculpation does not reſt here: He aſſerts, moreover, that his Journey was known to the Offices in *France* and *England* where he applied for Paſſports; and even to Mr. *Minette*, who carried him over. With all due Reſpect to ſo eminent a Character, it might poſſibly happen, that neither the Officers who made out his Paſſports, nor the Pacquet-Maſter who carried him over, had Occaſion or Curioſity to aſk what he was.

He diſclaims the Affectation of Secrecy while he was in *France*; and yet for his three firſt Months Reſidence at *Paris*, though he reſorted frequently to the *Scotch* College, it was not even whiſpered what Errand he came upon; nor did he mention it to Sir *William Stewart*, who he knew was Sir *John* and Lady *Jane*'s particular Acquaintance. But after having been five Months in *Paris*, he offered a Gentleman to ſhew him an Account of his Proceedings, and the Memorial to be laid before his Counſel. If Mr. *Andrew Stuart* really made any ſuch Offer, he might do it without diſcloſing any Secret. That Gentleman was not concerned for the Defender: His Account of his Proceedings, if it was the ſame as the Journal now produced, was not calculated to reveal Secrets; and the Memorial he laid before Counſel contained nothing leſs than an Account of his Diſcoveries: Therefore it is not very material that the whole Story ſtands upon his own Word.

The next Inſtance he alledges of Candour is, "That in the Year 1763, he communicated, ——— 9. "with unbounded Confidence, to one of the Defender's Counſel, the Whole of his Diſcoveries." This alſo does not happen to be true; for the ſingle Thing he ſhewed that Gentleman was the Memorial which was laid before his *French* Counſel, which did not contain an Account of the Diſcoveries he had made; and this happened as late as the Month of *June* 1763, when that Gentleman was about to leave *Paris*.

But, without ſpending any more Time upon Mr. *Andrew Stuart*'s Apologies, it is fit to examine, by Inſtances, what his Conduct really was, ſo far as it influenced the Teſtimony produced in this Cauſe, or the Defender's Opportunity of proving his Caſe. For the reſt of his Character let it take its own Chance.

Mr. *Andrew Stuart*, before he ſet out from *Edinburgh*, was poſſeſſed of all the Knowledge which the Service could afford. He had learnt that Lady *Jane* became pregnant at *Aix*, in the End of the Year 1747: That her Pregnancy was obſerved to grow by juſt Degrees to a Size which became remarkable. That upon the 1ſt of *July* 1748, ſhe went from *Rheims* to *Paris*, to lie-in. That ſhe went firſt to an Inn, to which Sir *John*'s Letters were directed to him while he ſtaid at *Paris*, and was called the *Hotel de Chaalons*, kept by *Gedefroi*.--- That ſhe went afterwards to the Houſe of a Mad. *Le Brun*, where ſhe was brought to-bed of Twins on the 10th of *July* by a Man-Midwife, called *La Marre*: That ten Days after that of her Delivery, ſhe removed to another Houſe, having been driven out of her former Lodging by Bugs. That after ſtaying ſome Time at that other Houſe, where Lady *Jane* recovered ſlowly, ſhe was adviſed by the Man-Midwife, who attended her, to go into the Country for Air; and that ſhe accordingly went to a Village near *Paris*; where after ſtaying ſome Days ſhe returned to *Rheims*. That during their Stay at this Village, Sir *John* went to *Paris* to ſee the younger Child. That the eldeſt Child being ſtrong, was taken along with them: and the younger being weakly was left under the Care of the Man-Midwife, with whom they held a punctual Correſpondence. That he was brought to *Rheims* juſt before they came to *England*. That both Children were treated by her with ſingular Tenderneſs and Affection; and that the Death of the younger, who is called by every Body the very Picture of her, broke her Heart, and ſhe died of that Affliction.

Theſe

Theſe were the Facts, which gave Mr. *Andrew Stuart* his Prejudices in Favour of the Truth and Reality of Mr. *Douglas*'s Birth; and he muſt have had a Judgment of a very ſingular Make, if he had not believed that, which no Man in *Scotland* doubted at that Time, though ſome very few have been perſuaded to think differently ſince.

Before reforting to any Man of the Law, the firſt Agents which appear to have been employed by Mr. *Andrew Stuart*, were one *Buhot*, an Inſpector of Police, and one *Duruiſſeau*, a Commiſſary; Men of great Opportunity, by their Offices, to bring Truth to Light; or, if that were more convenient, to advance Falſhood into its Place.

La Marre was dead: *Le Brun* was either dead, or removed, and not to be found. But in the Autumn 1762, Mr. *Andrew Stuart* had converſed with Meſſ. *Menager* and *Gilles*, who both informed him, that *La Marre* was a practiſed Man-Midwife, who had been much employed in that Branch both at the *Hotel Dieu*, and before: That about fourteen or fifteen Years before, (in *November* 1764, he ſays ſixteen or ſeventeen Years before) this *La Marre* had been engaged to attend the Delivery of a foreign Lady of Condition, who came from beyond Sea, and laſt from *Rheims*, and deſired *Menager* to be preſent at it on Account of the Lady's advanced Age, which ſome Accident hindered. That *La Marre* told him afterwards, that he had delivered her of Twins, of which one was ſtrong, and the other weakly. That the weakly Child was left under his Care, and put out by him to Nurſe near *Paris*, towards *Belleville*, or *Menilmontant*. Monſ. *Gilles* remembered alſo (though it does not appear ſo expreſly that Mr. *Andrew Stuart* queſtioned him to that), that this Delivery happened at *Le Brun*'s.

This Converſation carried him of Courſe to the Widow of *La Marre*, who lived *Rue St. Anne*, *Butte la Roche*, in the ſame Houſe where her Huſband had left her. Little ſeems to have been gathered from her, as her Husband was not uſed to talk with her of his Patients, and ſhe had burnt his Papers: She remembered, however, that in thoſe Papers, there was Something relative to the Name of *Stewart*; and that her Siſter had told her, how in Walking out with *La Marre*, he had bid her wait while he went in to pay the Months to the Nurſe of a Foreigner's Child of great Diſtinction. As Mr. *Andrew Stuart*'s Journal of this Date has not been publiſhed, there is no direct Evidence of the Converſation which paſſed at this Time; but it ſeems highly probable that ſhe muſt have told him then, what ſhe appears to have told him and *Huiſſier de Parlement* afterwards.

Not diſcovering *Le Brun*, he went of Courſe to *Michel*'s. The Converſation at *Michel*'s is ſtated in his Memorial for Counſel, but ſo falſely, that nothing can be made of it. She had told Principal *Gordon*, that Lady *Jane* had kept her Bed ſeveral Days, on Account of her recent Delivery, ſomewhere near *Verſailles*, confounding the Place of Delivery with the Abode of the Nurſe. She ſeems to have told Mr. *Andrew Stuart*, that Lady *Jane* had gone out ſoon after ſhe came; miſtaking for it Mrs. *Hewit*'s going out to fetch Home the Child. But the material Article, in Truth that which being miſrepreſented gave Riſe to the preſent Action, was, their Police-Book, in which there was this Article, "Mr. *Fluratl Ecoiſſois* et ſa Famille, entre le "8 *Juillet*, 1748." It was in the Hand-Writing of *Marie Maliſſet*, the Maid of the Houſe, who wrote a clear, ſtrong, *French* Hand, and ſufficiently remarkable. She had written for a Country *Procureur*. There were many other Entries in the ſame Book, two in the ſame Page, and two in the oppoſite Page; and her Hand was well known, in Fact, as it might be expected it ſhould, to her Maſter and Miſtreſs. The Entry before it had a corrected Date, and was either of the 12th, or 10th of *July*: The Entry after it of the 31ſt.

From hence he went to *Compiegne* to Mad *Favre*'s, the Houſekeeper of Mad. *De Pompadour*, who had been Nurſe to the Defender. What her Converſation at firſt was, can only be collected from what ſhe was brought at laſt to ſwear, for that alſo is groſly miſrepreſented. In the Memorial for Counſel, ſhe remembered a great Variety of Particulars: She lived in the *Rue Serpente*, and was fetched by Mad. *Michel*, her Neighbour, to nurſe the Child of a Foreigner of Diſtinction, who had been diſappointed in a former Nurſe. The Child was a Twin; and the Child *might* be three Weeks, or a Month old; but Nobody would have taken him for more than eight Days, only that the red Colour belonging to that Age was gone, and his Navel was untied: She nurſed him four or five Days at the *Hotel D'Anjou*, and remembers that the Lady ſhewed remarkable Affection to it. After which, ſhe carried him Home, where the Gentleman came to ſee him two or three Times a Day, and ſhe carried him twice or thrice to the *Hotel D'Anjou*. She alſo went with them to *Dammartin*, and ſtaid till they could get another Nurſe: She did not remember where the Lady was brought to-bed, nor by whom. This is what ſhe depoſed at laſt, and, as ſhe ſwears, what ſhe depoſed at the *Tournelle*.

He converſed alſo with M. *Blainville*; but as her Depoſition, which is not very material, ſeems to be little more like Truth than his Memorial, there is no Way of gueſſing what paſſed between them.

The

The Memorial ſays, that the Mademoiſelles *Hibert* at *Rheims* told him, ſhe was, according to their Memory, not ſo big as to promiſe ſo early a Delivery, and that ſhe did not increaſe in Bulk while ſhe was in their Houſe.

He converſed alſo with Mr. and Mad. *Maillefer*, who only depoſed in this Proceſs to Circumſtances tending to confirm the Truth of the Story, as far as Circumſtances which happened at *Rheims* could go towards it; particularly, her keeping her Bed for a Miſcarriage, after which, ſhe, Mad. *Maillefer*, viſited her: But how much of this was told Mr. *Andrew Stuart* it is impoſſible to imagine; as ſhe certainly did not tell him what he aſcribes to her in his Memorial.

There are ſome other Perſons with whom he converſed in like Manner; but as Nothing ſeeems to turn upon their Evidence, it will not be material at preſent to take Notice of them.

It ſhould ſeem probable, that theſe Diſcoveries, made by Perſons who had not then heard of any Diſpute, much leſs ſeen any Body on the Part of Mr. *Douglas*, who did not know of the Attack which was begun againſt him, made while the Enquiry was carried on under the Veil of perfect Secrecy, might tend to increaſe Mr. *Andrew Stuart*'s Prejudices, that the Story would come out as repreſented in the Service.

As Mr. *Andrew Stuart* was induced to take this underhand Part only by being conſcious of the honeſteſt Purpoſes, and determined to make a fair Enquiry, and tranſmit a juſt Report, it may be fit to examine, in the Report itſelf, how he carried theſe laudable Views into Execution.

In his Memorial of *November*, without other Date (wherein he offers to ſtate "Les Decouvertes "faites depuis peu pour s'aſſurer de la Realité de cet Accouchement"), the Account he gives of *La Marre* is, that all his Enquiries had been fruitleſs; particularly that he could not find ſuch a Name in the Regiſters of St. *Coſme*; that all the Phyſicians and Surgeons of Character had declared that they had never known or heard ſpeak of ſuch a Perſon in their Profeſſion: They had indeed diſcovered the Widow of a *La Marre*, who was a poor Surgeon, and delivered Women ſometimes; but her Huſband had never been out of *Paris* above three or four Days at a Time; and ſhe never knew of his having brought a foreign Lady to-bed, or taken Care of her Child. Upon which Account, ſhort as it ſtands of the Truth, they ſtate it as a Thing to be wiſhed, that the Perſon who played the Part of Man-Midwife could be found, if there really was ſuch a Perſon.

Whoever will take the Trouble of comparing this Account with the real Diſcoveries which Mr. *Andrew Stuart* had made at that Time, will find it to be not what he promiſes, a State of his Diſcoveries, but a notorious and wilful Suppreſſion of the moſt material and remarkable, by the Medium of a direct Falſhood, that *all* the Phyſicians and Surgeons of Character had diſclaimed Knowledge of ſuch a Man.

Of the *Michels*, the Memorial pretends to have diſcovered, that they had lodged in a retired Quarter (viz. the Heart of the *Fauxbourg St. Germain*), under a feigned Name, at a Perſon's whoſe Name bore no Reſemblance to *Le Brun*; the Story of which Diſcovery runs thus: On the 12th of *October*, Mr. *Andrew Stuart* and *Buhot* went to *Michel*'s, the *Petit Hotel D'Anjou*, and demanded their Police-Book for the Year 1748. Turning it over, they obſerved no ſuch Name as *Stewart*; but at the Time ſought after, they found the Entry of *Fluratl*, a *Scotchman*, and his Family, the 8th of *July*. Hereupon they aſked whether the *Michels* remembered *that Perſon*, who readily gave a full Account of them: And *after* giving this Account, upon View of the Book, they aſked her whether ſhe remembered their *Names*, and was ſure they entered in *July*. They anſwered, "We do not remember the Names, but you will find them in the Book; and we believe "the Gentleman wrote himſelf what you ſee there." Whereupon the Tutor of Duke *Hamilton* looked attentively upon it, and was perſuaded that it was the Hand of Sir *John*, whom he had often ſeen write. She had always heard that the Lady had not been delivered at *Paris*, and, in Fact, ſhe appeared in perfect Health, with many other Circumſtances, which will be taken Notice of hereafter, but make nothing to the preſent Purpoſe.

Every Syllable of this Account is a direct Falſhood, and has been flatly contradicted by their own Witneſs; particularly that Part which ſuſtains the Edge of their Charge, that he lived under a feigned Name, in a retired Quarter. The *Michels* knew the Hand exactly; they therefore could not refer it to Sir *John Stewart*: The Hand bears no Reſemblance to his. It is falſe, therefore, that the Tutor of Duke *Hamilton*, who had often ſeen him write, believed it to be his: And what marks the Purpoſe of miſleading his Counſel more is, that he neither diſcloſed to them the Circumſtance of the Entry's being poſterior to one of a later Date; nor did he ſhew them the Book; though in the Beginning of that Month he had got it into his Poſſeſſion, in ſuch Manner as ſhall be mentioned hereafter.

P. P. 861. D.

The Memorial ſays; 1. That Mad. *Favre*, then the *Concierge* of Mad. *De Pompadour*, lamented that ſhe had miſſed her Fortune in not going with them to *Rheims*. 2. That they came without

without the leaſt Noiſe, and were extremely ſecret in their Conduct. 3. That the Child appeared to be two or three Months old, and the Lady was extremely well, and had no Marks of recent Delivery; and which did not ſurprize her, as the Child appeared at leaſt two Months old. 4. That ſhe remembered well to have heard them ſay the Lady was brought to-bed at St. *Germain*, and were under Difficulties to find a Nurſe at that Place. 5. That they had told her one of the Twins was dead, as the Cauſe of giving her ſuch particular Charge of the other.

When the Purſuers examined Mad. *Favre*, every Syllable of this turned out to be falſe. The firſt is ſelf-evidently ſo; the ſecond, though a material Circumſtance, was a Queſtion the Purſuers dared not put to her; the third, fourth, and fifth, ſhe expreſsly contradicts. P. P. 876.

The Memorial ſays, that Mad. *Maillefer*, at *Rheims*, told Mr. *Andrew Stuart*, 1. That ſhe was at the Baptiſm of Mr. *Douglas*; ſhe conſidered him attentively, and was perſuaded that he was ſix or ſeven Months old. 2. That ſhe teſtified her Surprize at Lady *Jane*'s not lying-in at *Rheims*; to which Sir *John* anſwered, that he diſtruſted the Midwives at *Rheims*, and went to *Paris* for better Aſſiſtance. 3. That Lady *Jane* keeping her Bed, ſhe enquired after Sir *John*, who explained, that at firſt he feared a Miſcarriage, but it turned out quite the contrary; meaning that critical Time when Women loſe the Capacity of Child-bearing. 4. That ſhe remarked great Difference between the two Children, and between the elder and his Parents, which gave her at the Time a Suſpicion of an Impoſture.

Every Syllable of this alſo was merely falſe. As to the firſt, Mad. *Maillefer* ſwears that ſhe ſaw the Child before and after the Baptiſm, and he appeared ſix or eight Weeks old: Mad. *Mayette*, who alſo converſed with them at the ſame Time, ſays, that when ſhe ſaw him firſt, he was a Month or ſix Weeks old. As to the ſecond, inſtead of having teſtified any Surprize that Lady *Jane* did not lye-in at *Rheims*, ſhe gives an Account of the *Rheims* Midwifery, which juſtifies the Idea upon which Sir *John* acted. As to the third, Mad. *Maillefer* has ſworn, that after the Baptiſm (when ſhe does not otherwiſe recollect, than by the Circumſtance of its being very cold), Sir *John* told her of his Wife's Miſcarriage; after which, ſhe ſent ſeveral Days to enquire after her, and at length went to viſit her, and found her up, and, which ſurprized her, in Stays. She remarked to Lady *Jane* her Wonder at that: Lady *Jane* told her, ſhe had worn Stays all the While ſhe was with Child; and ſhewed them to her, laced on both Sides, as the Stays of Women with Child uſually are. As to the fourth, the Diſproportion between the Children, and her Suſpicions thereupon, Mad. *Maillefer* ſwears, that ſhe obſerved the youngeſt Child was very delicate and fair, reſembling his Mother, as much as could be obſerved at that Age. She never had, nor knew any Body who had, any Doubt of the Children's being Mr. and Mad. *Stewart*'s. D. P. 602.

Upon this groſs Miſrepreſentation of every material Article, Mr. *Andrew Stuart* put two Queſtions to his Counſel: Firſt, Whether the Facts abovementioned were ſufficient to deſtroy the Impreſſion of the baptiſmal Extract and the Poſſeſſion of State, ſo as the Defender might be declared an Intruder upon the Family, and he, Duke *Hamilton*, be intitled to take the Succeſſion to the Duke of *Douglas*. Secondly, What Precaution might be properly uſed to preſerve the Teſtimony? Might they, for Example, be examined before a Commiſſary or the *Lieutenant de Police*? Or, if ſuch Depoſitions would have no Force, might the ſame Witneſſes be heard anew on a judicial Examination? But though Volumes of Impertinence have been publiſhed in this Cauſe under the Name of Candour, Mr. *Andrew Stuart* has thought fit to ſuppreſs the Anſwer of the Counſel to theſe Queſtions, and the Date of their Conſultation, for Reaſons which will reſult preſently.

In the Month of *September*, Mr. *Andrew Stuart* had applied to the Lieutenant for the Aid of the Police, to make his Enquiries after *La Marre* and *Le Brun*; and obtained the Lieutenant's Warrant for his Agent *Buhot* to afford that Aſſiſtance.

The Nature of that Order from the Lieutenant is ſuch, that the Officer of Police ſo deputed, muſt return to the Office Accounts of the Diſcoveries he ſhall have made.

On the 18th of *October*, *Buhot* made verbal Report to the *Lieutenant de Police* of his Diſcoveries; which, in ſuch a Matter, was ſomething extraordinary. Perhaps it was thought more prudent not to put it into Writing, if it could be avoided. The Lieutenant ordered him to make his Report in Writing from Time to Time; and Mr. *Buhot* was tempted to take the infamous Part of reporting all the *Diſcoveries* gathered from the Widow *La Marre*, the *Michels*, and Mad. *Favre*, in preciſely the ſame Way as the Memorial had done.

It was neceſſary to take further Care of *Michel*'s Book. The very Inſpection of it would give the Lye to the Report and Memorial, with ſome Danger to Mr. *Buhot*, and no conſiderable Addition to Mr. *Andrew Stuart*'s then Reputation.

Accordingly,

Accordingly, on the 5th of *November*, Mr. *Andrew Stuart* preſented a Petition to the *Lieutenant de Police*, repreſenting that it was of Conſequence to his Pupil, to prove the Entry of Sir *John*, &c. to the *Hotel D'Anjou* on the 8th of *July* 1748; to which End it was neceſſary that the Book ſhould be depoſited ſo as not to be altered: Praying, therefore, that it might be depoſited in ſuch Hands as the Lieutenant ſhould order; the State thereof being firſt made by Proceſs verbal before the Commiſſary of the Quarter.

It was ordered accordingly.

The Commiſſary of the Quarter was Mr. *Duvilleau*, a Man aptly choſen for the Work he was to do. On the 8th he did make up the State of the Book by Proceſs verbal; whereby, among other Things, *Michel* is made to declare, that the Hand-Writing of the Entry is neither his own, nor his Wife's, but, as far as he can remember, of the Perſon called *Fluralt* (inſtead of *Fluratl.*) Whereupon the Book was delivered into the Hands of *Buhot* for ſafe Keeping.

It will afterwards be ſhewn, that *Michel* never ſaid what is here put in his Name; and that *Duvilleau* attempted to ſupport it afterwards by Perjury.

On the 20th of *November*, Mr. *Andrew Stuart* wrote to his Employers in *Scotland* a Letter, of which he has inſtructed his Counſel to give ſuch Account, as he thought material to his then Purpoſe. In the Caſe which he laid before the Houſe of Lords in the laſt Appeal in this Cauſe 1764, he deſcribes it to be a Letter, "Containing a *general* Account of the *Diſcoveries* he had "made, and deſiring Advice in what Manner he ought to proceed." It bore alſo, "That he "had ſtated the Caſe, and the Diſcoveries he had made, in a Memorial, upon which he had taken "the Opinion of one of the moſt celebrated Counſel in *France*, who had adviſed, that there "ſhould be a Suit inſtantly commenced in *Paris*."

It is impoſſible to collect from this, Whether he ſent the Caſe itſelf, much leſs the Opinion of his Counſel upon it; or whether the *Advice* he alludes to was in Writing? And to ſpeak out, it is not believed that Mr. *Andrew Stuart* ever received ſuch Advice from any Counſel, celebrated or not celebrated. It may be preſumed, however, that the general Account of his Diſcoveries had no more Truth in it than the Memorial, becauſe it would have anſwered no End to miſlead his *French* Counſel, without miſleading his *Britiſh* alſo.

This is the Hiſtory of the Enquiries made by Mr. *Andrew Stuart*; a Man of Character, which ſets him above the moſt diſtant Suſpicion; a Man, who went over, perſuaded that the Facts would turn out as ſet forth in the Service, and determined to make a faithful Report of the Reſult of his Enquiries, in whatever Manner they ſhould turn out.

Mr. *Andrew Stuart*'s Juſtification of his Conduct is to be found in the Sequel to the Memorial of 1767, Ch. 3. entitled, "An Anſwer to the Defender's Objection, that the Action was "originally undertaken on *ſlight* Grounds." The Defender made no ſuch Objection. He admits, and always did, that the Grounds were *ſtrong* enough to begin upon; but he inſiſted, and ſtill does, that every material Article of them are falſe, and were known to be ſo by Mr. *Andrew Stuart* at the Time he gave them out for true. He complains not that the Tutors of Duke *Hamilton* have been miſled; that is their Affair; but that he has been dragged after them to defend his Birthright, at ſuch monſtrous Expence, againſt a Suit begun and conducted falſly and fraudulently.

Seq. to Mem. P. 12. § 4.

Nor is he at all ſatisfied with Mr. *Andrew Stuart*'s Apology. It runs thus: "*Moſt* of the Facts "have come out in the Proof, in the *ſame Shape* they appear to have been viewed in the Be- "ginning, making Allowance only for the *Inaccuracies* which might happen from the *Manner* "in which they were collected together in the Memorial. This Memorial was drawn up from "*Memory:* For Mr. *Stuart* thought it improper to take down in Writing any Thing at his In- "terviews with the Witneſſes. After theſe Interviews, ſometimes more and ſometimes leſs re- "cently, he took Notes of what he *recollected*; and though attentive to make them as accurate "as poſſible, ſome *ſmall Errors muſt* have been committed, as the *French* Language was not then "familiar to him."

Now obſerving that the Outſet is falſe, or that moſt of the Facts have come out in the ſame Shape, every one of thoſe mentioned above having been flatly contradicted, it is left with all the Advantage the Queſtion can derive from that Apology, to be judged, Whether it be poſſible that ſuch groſs and total Miſrepreſentations is referable. Let Mr. *Andrew Stuart* have been as inattentive, as forgetful, and as ignorant of the *French* Language, that is to ſay, as unfit for the Employment he went upon, as he chuſes to have it ſuppoſed, ſo many Falſhoods could not have crept upon the Meaneſt of human Underſtanding by Accident.

CHAP.

CHAP. IV.

Of the Tournelle *Proceſs.*

MR. *Andrew Stuart* having acquired in this Manner the Information neceſſary for his Purpoſe, the Uſe he made of it was equally conſiſtent with the Character of Honour he aſſumes.—— The preſent Action of Reduction, for ſetting aſide the Defender's Service before-mentioned, as Nephew and Heir to his Uncle the late Duke of *Douglas*, was commenced in *Scotland* on the 7th of *December* 1762: And on the 17th of the ſame Month Mr. *Andrew Stuart*, in Conjunction with Sir *Hew Dalrymple*, one of the Heirs of Line of *William* the firſt Marquis of *Douglas*, thought proper to exhibit a *Plainte* to the Court of *Tournelle*, a criminal Branch of the Parliament of *Paris*, accuſing Sir *John Stewart* and Mrs. *Helen Hewit* of the Crime of Suppoſition; repreſenting Sir *John* as an Adventurer, and Mrs. *Hewit* as an abandoned Woman.

To this criminal Action the *Procureur-General* gave his Concurrence; though it is not evident in what Manner the public Law of *France* could be affected by a Crime which could only have an Effect in *Scotland*; and which was proſecuted to convict Perſons, againſt whom no Decree of the Court of *Tournelle* could operate in any Event: But the private Advantages of this Proſecution were manifold to the Purſuers.—The inviolable Secrecy that attends the Proceedings in the Court of *Tournelle*, and all its inquiſitorial Forms, are perfectly calculated for ſuch a Work as Mr. *Andrew Stuart* was carrying on.—He knew that the ſlighteſt Inſpection would blow up his Syſtem, founded on *Michel*'s Book, as they would have been obliged to exhibit it to the Defender. The Book had been already conſigned to *Buhot*; but there it was ſcarcely ſafe: If once within the Walls of the *Tournelle*, no human Power could ever releaſe it, nor any human Eye ſee it. Nor was this the only Advantage ariſing from the *Tournelle* Proceſs:—The Method of examining Witneſſes in that Court is directly contrary to the eſtabliſhed Notions of Equity and fair Dealing adopted in *Great-Britain*.—By making Uſe of the Power he had in his Hands, he imagined he would extort from the Witneſſes, Depoſitions, which, if they did not ſerve his Purpoſe directly, would at leaſt have the Effect to over-awe the Witneſſes, and lay them under the Neceſſity of ſticking to the Tale already told, when they ſhould be examined in the civil Action.

Another Effect of this Proceſs was to prevent Sir *John Stewart* from going to *Paris*.—The Nature of *French* Criminal Law is ſuch, that the moſt innocent Perſon would not willingly put himſelf on its Mercy:—Severe Impriſonment is the leaſt of its Rigours; for upon the ſlighteſt preſumptive Proof, the Torture is called in Aid.——Such Advantages, with the Sentiments of Honour which directed Mr. *Andrew Stuart* in his Enquiries, prevailed with him to get over that plain Rule of Equity, which conſiders as an infamous Fraud, the bringing of two Actions in different Courts for the ſame Subject; much more, a civil and a criminal Action; an Action in *France*, and an Action in *Scotland*.

It is to no Purpoſe that the Purſuers ſay, the Suit in the Court of *Tournelle* was competent, becauſe Suppoſition is a Crime; and a Crime by the general Rules of Law may be tried in the Country where it is committed.---The Court was indeed competent; but it was very incompetent for Mr. *Andrew Stuart* to bring a criminal Action in *France* on the ſame Grounds on which he brought a civil Action in *Scotland*; to prejudicate the one by the other, and to conceal it with ſo much Art, that though the Defender's Agents were in *Paris* about the Time this criminal Action was commenced, and converſed with Mr. *Andrew Stuart*, yet it was not till after *Michel*'s Book had been lodged in the *Tournelle*, and many Witneſſes had been examined there, that they knew at laſt, by a mere Accident, of the Exiſtence of this Proceſs.

The Uſe made of it in *Scotland* was this :---By the Forms of the Court of Seſſion, a certain Number of Days are allowed from the Time of Citation, before an Action can be regularly called in Court: And no Proof can be allowed in any Caſe, until a Condeſcendence or Particular of Facts is given into the Court, and the Import of them conſidered.---In the preſent Caſe, two Days after ſerving the Writs or Summonſes, that is, on the 9th of *December* 1762, the Purſuers gave in a Petition to the Court, demanding a Proof to lie *in Retentis*.

But before this Queſtion was determined they made a ſecond, and a very irregular Application, without the Notices or Informations required by the Forms, demanding the Examination of Sir *John Stewart*, upon an Allegation, ſupported by the Oath of Mr. *Archibald Stewart*, that he intended to go abroad: This was granted very irregularly; and Sir *John* was examined in the Manner which will be ſtated in another Part of this Caſe.---His Declaration was ſealed up to lye in Court till the Iſſue of the Proof.---But the Purſuers deſpiſing this Sanction of the Court, made it the Ground of a new *Plainte* to the *Tournelle* on the 4th of *January* 1763: And to redargue the Particulars contained in Sir *John*'s Declaration, all the Purſuers Efforts were hereafter applied, and all

Objections to La Marre conſidered, p. 189.

their Demands of Proof from the *Tournelle* directed.---*Michel*'s Books, *Godefroi*'s Books, every Article of written Evidence was ſhut up in the *Tournelle*, whence nothing could poſſibly tranſpire to direct the Defender's People of Buſineſs in what Manner to ward againſt this double and deceitful Attack.

The Purſuers attempt to defend the *Tournelle* Proceſs, by ſaying it was expedient for them: That the Forms of the Court of Seſſion are dilatory, and, by their Delay, they might have riſqued the Loſs of their Evidence. But this Excuſe aggravates the Iniquity of their Proceedings.---Becauſe the Forms of a Court, which alone has a Right to decide, do not favour the Impetuoſity of a Proſecutor's zealous Rancour, ſhall he be intitled to carry on an inquiſitory Action in a foreign Country, whoſe arbitrary Laws are incompatible with the Spirit of his own, merely becauſe it is expedient and advantageous to the End he has in View? Such Proceedings are obnoxious to Juſtice; and he who cannot obtain Redreſs of a real Wrong by the Laws and eſtabliſhed Rules of his proper Court, forfeits all Title to the Protection of the Laws, ſo ſoon as he recurs to indirect and underhand Methods of acquiring his Remedy. But the Apology is falſe in Fact; for the Forms of Proceeding in the Court of Seſſion allow of the immediate Examination of Witneſſes to lie in *Retentis*, upon the Proſecutor's giving in a Condeſcendence or Particular of the Facts he is to prove, and the Danger of loſing their Evidence by Death, &c.

But if Expediency had rendered the *Tournelle* Proceſs neceſſary, and that Juſtice was intended, Why was it kept a Secret from the Defender?---The Ordinances and Forms in that Court forbid, it is true, a Communication of the Proceedings to the accuſed Perſons;---but the Defender was no Party in the *Tournelle*, the Action was only brought againſt Sir *John Stewart* and Mrs. *Hewit*, to prejudge indirectly the Queſtion of *his State*; a Circumſtance which renders the Matter ſtill more flagitious.---If the Secret could have been kept till, upon the partial and perjured Evidence brought in the *Tournelle*, a Judgment had been obtained, it is eaſy to ſee what Uſe would have been made of that Judgment againſt the Defender:---By the eſtabliſhed Rules of Equity, therefore, he ought to have known in what Manner it was carried on, becauſe the Conſequences of it were to affect his civil Intereſt only, and not the Perſons who were nominally accuſed.---If Juſtice had been intended, Mr. *Andrew Stuart* would have acted in a different Manner: He would not have taken the Court of Seſſion *by Surpriſe*; pretending to commence his Action before it, and at the ſame Time bringing another in *France*.---He would not have concealed his real Purpoſe of demanding Sir *John Stewart*'s Examination; but he knew he could not have obtained it from the Court, had he avowed that he intended to make Uſe of it to convict him of a capital Crime in a foreign Court. It was an unfair Proceeding, had he made no other Uſe of it than in the civil Action, as the Court intended. ---But to bring it into the *Tournelle*, in expreſs Defiance of theſe Intentions, was perhaps the moſt daring Act of foul Proceeding, by which Juſtice was ever yet attempted to be circumvented.

Was it expedient for publick Juſtice, that Sir *John Stewart* and Mrs. *Hewit* ſhould be accuſed of a Crime before it could be known whether a Crime was committed? That the *Plainte* exhibited againſt them ſhould contain a moſt virulent Declamation to prepoſſeſs the ignorant Witneſſes, to whoſe Depoſitions, by the Forms of the Court, that *Plainte* was a Text?---That what Part of the Information Mr. *Andrew Stuart* had received, and which ſupported the Syſtem of *Michel*'s Books, ſhould be there aſſerted as undeniably proved, while not a Word is mentioned of the Information which he had alſo received favourable to the Defender? not a Word of what *Gilles* and *Menager* had told him about *La Marre*; nor any other Circumſtance that could lead the Court, before which he ſo improperly pleaded without a Party, to form any other than a partial and unjuſt Judgment of the Caſe.

Happily, the Accident which diſcovered this Work of Darkneſs to the Defender's Agents, defeated the great Object intended by it, namely, a capital Judgment againſt Sir *John Stewart* and Mrs. *Hewit*.---But enough of Miſchief was already done; many Witneſſes had been examined. *Godefroi* and *Michel*'s Books were locked up from the Defender.---The Widow of *La Marre* was known to poſſeſs ſome of her late Huſband's Books, and immediately they too were hurried into the *Tournelle*.---The Officers of Police and Juſtice were prepoſſeſſed by the ſcandalous Falſhoods contained in *Buhot*'s Reports to the *Lieutenant de Police*, and the poſitive Aſſertions that the Crime was undeniably proved; and therefore refuſed to aſſiſt the Defender's Agents, or to communicate any Thing they knew, becauſe the Affair was *en Juſtice reglée*.

Mr. *Andrew Stuart*'s Candour and Regard for Juſtice goes ſo far as to aſſert, that the *Tournelle* Proceſs was not only competent and expedient to Juſtice, but alſo advantageous to the Defender; and why? Becauſe it was giving him two Chances for one.---The Defender's State is challenged in *Scotland*, and an Action brought at the ſame Time in *France*, and ſecretly carried on there *ex Parte* to convict the Witneſſes to his Birth of a capital Crime.---This is, no Doubt, a happy and favourable Circumſtance to him; and equally advantageous to his private Intereſt, and conducive to promote publick Juſtice!

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The Purſuers ſay, the *Tournelle* Proceſs ought not to have prevented Sir *John Stewart* from coming to *Paris:* If he was innocent, he ought to have braved it; and his not braving it, proves he was guilty.-- But, on the other Hand, if the Purſuers had not been afraid of Sir *John* in *Paris*, why did Mr. *Andrew Stuart* give him ſo good a Pretence to keep away? Many Reaſons may be urged why a Man of ſeventy-four Years, and withal very infirm, does not chuſe to expoſe himſelf to unavoidable Impriſonment, and perhaps worſe Treatment.---The *Tournelle* is a formidable Court; and though it would be abſurd to ſay, there is not Juſtice in *France*, yet the Forms of Proceeding in criminal Matters are not favourable to Innocence, when attacked by ſuch Arms as Mr. *Andrew Stuart* employed.---But there can be no good Reaſon given, why a Perſon, who pretends to be in Search of Truth, ſhould furniſh a Pretence to keep away from the Scene of Action the Perſon from whom a Diſcovery of Truth could moſt reaſonably be expected. If Truth had been Mr. *Stuart*'s Motive, he would, inſtead of deterring Sir *John Stewart* by the *Tournelle* Proceſs, have invited him to *Paris* along with himſelf.---This good Conſequence might have happened, that either Sir *John*, by ſuch local Information as he could give, would have gone near to ſatisfy him, that his Suſpicions were without Foundation; or, at leaſt, have helped the Diſcovery of the Impoſture: And it is very evident, that the *Sanrys* and the *Mignons* depoſing to the Identity of his Perſon, would have been intitled to more Credit than when they give the abſurd Deſcriptions of his Perſon from their Leſſon the *Monitoire*, and which nevertheleſs apply to him juſt as well as they do to three-fourths of Mankind.

All the Pretences with which the Purſuers would cover the Iniquity of their Conduct in this *Tournelle* Proceſs are vain and fallacious. Such is their Aſſertion, that they commenced it upon the Advice of the moſt eminent Counſel in *England*, *Scotland*, and *France*.—The Advice of Counſel can never authorize a Meaſure which Law and Juſtice reprobates; no *Engliſh* or *Scotch* Counſel could have adviſed a Proceeding ſo contrary to the Laws of both Kingdoms, upon a fair State of the Caſe; and upon a partial State, the Blame recurs upon him that made it: But Mr. *Andrew Stuart* has not thought proper to produce the Opinion on which he went, nor to name the Counſel who gave it; and until he does ſo, the Defender muſt be allowed to doubt the Truth of his Aſſertion.---As to the *French* Counſel, the Caſe is different. It does not appear that the *French* Counſel knew the great Repugnance of the eſtabliſhed Rules of Evidence in *Great-Britain* to thoſe of *France*; they only conſider the Competency of the Action, and no Doubt it was competent in Form, upon the Suppoſal of a Crime actually committed within the Juriſdiction of the Parliament of *Paris*.—But the *French* Lawyers do not enter at all into the Argument of Equity, or the Propriety of bringing two different Actions; a Criminal one in *Paris* to prejudge the Civil one in *Scotland*:—They were miſled by the unfair and partial State of the Caſe laid before them, which repreſents the Defender as an Upſtart claiming a State and Condition which he never had enjoyed, and the Impoſture ſo glaring and ſo publickly detected, as only to need the Sanction of a judicial Determination to puniſh the Perſons who are accuſed of it.

But however the Opinion of Counſel may have miſled Mr. *Andrew Stuart* in the Inſtitution of his Action, he does not pretend the Opinion of Counſel as an Excuſe for having carried it on in the clandeſtine Manner he did.

But when the Defender came to be informed that this Conſpiracy was carrying on againſt him in the *Tournelle*, he complained of it to the Court of Seſſion in *Scotland*.---If Mr *Andrew Stuart* had been miſled by his Counſel hitherto, he had now an Opportunity of being convinced of his Error, and that Love of Juſtice which he pretends to, ought to have made him alter his Conduct; but, inſtead of that, when demanded to exhibit a Copy of the *Plainte*, and explain the Proceedings upon it, he declares, that he has no Copy of the *Plainte*, and that the Secrecy of the Proceedings are ſuch, that he is totally ignorant of them.---Believe him who may, that he gave in a *Plainte* to the Court without retaining a Copy of it; or that he knew nothing of the Proceedings which he himſelf directed.---It appears alſo, by this Application to the Court of Seſſion, that his Zeal to begin this *Tournelle* Proceſs had made him give in his *Plainte* before he could be authoriſed by the other Tutors of Duke *Hamilton*; becauſe their Commiſſion to him, impowering him to carry on Suits in *France*, is dated in *Scotland*, the 13th of *December*, 1762, and the firſt *Plainte* is dated the 17th of the ſame Month.

But at this very Time Mr. *Stuart* knew that the *Plaintes*, and whole Proceedings therein, except the Depoſitions of the Witneſſes, were always in his abſolute Power, and that, as Purſuer, he was intitled to demand what Copies or Extracts thereof he pleaſed; and accordingly, at an after-Period of the Cauſe, when the Court ordered Copies of theſe *Plaintes* to be produced, Extracts thereof, ſigned by the *Greffier*, were accordingly produced.

CHAP. V.

Of the Procedure in the Court of Seſſion upon the Reduction, and in the Tournelle *Proceſs, and of the* Monitoire.

THE Defender had complained, as has been ſaid, to the Court of Seſſion againſt the Proceedings in the *Tournelle*, in *February* and *March* 1763, before the Action of Reduction was regularly in Court. However, that Action came into Court in the Month of *June*; and the firſt Queſtion agitated, was the Title of Duke *Hamilton* to take the Character of Purſuer. The Objection to his Title is already ſtated; and the Court of Seſſion, by Interlocutor 30th *June*, 1763, found that the Duke of *Hamilton* had a Title to inſiſt in this Action.

The Purſuers ſoon after put in their Condeſcendence or Particular of Facts, conſiſting of ſixty-one ſeparate Articles, whereof the forty-three firſt Articles contain a Detail of Lady *Jane* and Sir *John*'s Reſidence Abroad, and Journey to *Paris*, with many Circumſtances tending to raiſe a Suſpicion that Lady *Jane* could not be delivered of Twins at the Time and Place mentioned in the Defender's Service.---Eleven Articles contain a circumſtantial Account of a Child carried off at *Paris* by one *Duverné*, in *November* 1749; and offer to prove, that this applied to *Sholto Douglas*, the Defender's Twin-Brother.---The remaining Part contains an Account, ſuch as the Purſuers might be ſuppoſed to give, of what paſſed after the Defender's Parents returned to *Britain*.

The Court heard Counſel upon the Matters contained in the Particular of Facts; and the Defender having argued, that the Proceedings in the *Tournelle* were of a Nature to afford a total Objection to the Witneſſes examined *there* in the preſent Action, Informations were ordered to be given in on that Point.—The Defender inſiſted on the Unfairneſs of the Proceedings, and the Incompatibility of the Nature of Evidence in *France*; with the Rules eſtabliſhed in this Country, as has been already ſtated.---The Purſuers, on the other Hand, made an awkward Attempt to vindicate the *Tournelle* Proceſs, by the Arguments which have been alſo explained.

The Court of Seſſion pronounced the following Interlocutors, which, upon an Appeal to the Houſe of Peers of this Date, were varied and amended, and are here ſtated accordingly.

13 April, 1764. "The Lords having conſidered the three ſeveral Proceſſes, &c. before Anſwer, allow the Purſuers to prove the Facts contained in the Condeſcendences given in for them, and allow to the Defender a conjunct Probation, and both Parties to prove every other Fact and Circumſtance which they may judge material in the Cauſe; and for that Effect grant "a new" Commiſſion to both Parties, ["*to be executed in the uſual Manner, purſuant to the Authority thereby given.*"]

27 July, 1763. Find the Objection, That certain Witneſſes had been examined in the *Tournelle Criminelle* of the Parliament of *Paris*, not relevant to incapacitate thoſe Witneſſes from being examined as Witneſſes in this Cauſe, reſerving all Objections to their Credibility when the Proof comes to be adviſed; but find, That the Purſuers, before proceeding to execute the Commiſſion now granted, muſt give in a Petition to the Parliament of *Paris*, praying, That the Depoſitions of the Witneſſes taken in Conſequence of the *Plaintes* at the Inſtance of any of the Purſuers, may be delivered up to the Commiſſioner to be named by the Defender, that theſe Depoſitions may be cancelled; and alſo praying, That Inſpection be granted to the Defender, of the *Plaintes*, Records, or Writings produced therein, and whole Procedure had thereon, with Liberty to the Defender to take Copies, Extracts, or Excerpts thereof: And in Caſe the Depoſitions cannot be delivered up, find the Purſuers muſt procure to the Defenders, or their Agents at *Paris*, free Acceſs to and Inſpection of the *Plaintes*, Proofs, Books, Writings, and whole Procedure had in theſe *Plaintes* before the *Tournelle Criminelle*, and Liberty to the Defenders to take Copies, Extracts, or Excerpts thereof, and this at leaſt fifteen Days before the Purſuers examine any Witneſſes that has been adduced before the *Tournelle Criminelle*: And the Lords hereby diſcharge the Purſuers, upon their Peril, to examine any more Witneſſes, or to give in any more *Plaintes* relative to the Queſtion in Iſſue between the Parties in this Cauſe before the *Tournelle Criminelle*, or any other Court in *France*, or to carry on any further Procedure in the Proſecution of the ſaid *Plaintes* after the 10th Day of *Auguſt* next, and during the Dependence of this Cauſe. *And find*, That no Witneſſes examined at the Inſtance of the Purſuers before any Court in *France*, from and after the 10th Day of *Auguſt* next, ſhall be admitted as Witneſſes in this Cauſe. Find, That the Purſuers muſt procure Inſpection to the Defenders, or their Agents at *Paris*, of all ſuch Letters to the Lieutenant-General, or other preſent Officers of the Police, relative to the Matters in Iſſue between the Parties, as ſhall, between and the 15th Day of *Auguſt* next, be ſpecially condeſcended on at *Paris* by the Defenders, or their ſaid Agents, and as ſhall be extant at the time; and alſo of all Books and Regiſters of Police, or other Writings relative to the Matters

ters in Iſſue between the Parties, which have been founded on by the Purſuers, or which have been or may be communicated to them, and are in the Cuſtody or Poſſeſſion of the *Lieutenant-General de Police*, or other Officers of the Police, with Liberty to take Copies, or Extracts, or Excerpts, from them at leaſt fifteen Days before any Witneſs can be examined for the Purſuers in *France*. [" *But* " *in Caſe the Purſuers ſhall inſiſt, that they cannot procure the Depoſitions or Writings above mentioned, to* " *be delivered up, or obtain Inſpection thereof, it is hereby ordered, That they ſhall produce all Copies* " *thereof, or of any Part thereof; as alſo all ſuch Letters, or Copies of Letters, to the Lieutenant of* " *Police, or other Officers of the Police for the Time being, relative to the Matters in Queſtion between* " *the Parties; and all Copies or Regiſters of Police; and all Writings, Memorandums, Entries, or Ex-* " *tracts, relative to any Information or Tranſaction before the Curés in Conſequence of the French Moni-* " *toire, which are in the Cuſtody or Power of the Purſuers, their Attorneys or Agents; ſuch Production* " *to be aſcertained before the Court of Seſſion, upon the Oath of the Purſuers, their Attorneys and Agents;* " *and that the Purſuers forthwith do every Thing in their Power to retract or diſcharge the ſaid Plaintes be-* " *fore the Tournelle Criminelle; and to procure the ſame to be diſmiſſed.*"] " And the Lords hereby direct and require the Commiſſioners to be named, to take down in Writing the Objections that may be made by either Party to the Witneſs or Witneſſes adduced by the other, and the Anſwers thereto, and that previous to the Examination of ſuch Witneſſes; and alſo to allow either Party to croſs-examine and interrogate the Witneſs adduced by the other; and to cauſe the Anſwers to be made by the Witneſſes upon ſuch croſs-Examination to be fully taken down: And ordain the Purſuers, before extracting the Act and Commiſſion, to give in a particular Condeſcendence of the Names, Deſignations, and Places of Abode, of the Witneſſes by whom they are to prove the Facts contained in their Condeſcendences; diſtinguiſhing therein thoſe who have been examined before the *Tournelle Criminelle:* And in Caſe the Purſuers ſhall find it neceſſary to prove any further Facts not contained in their Condeſcendences, nor ariſing therefrom, nor from the Examination of the ſaid Witneſſes, or to adduce any Witneſſes, other than thoſe contained in the Liſt hereby ordained to be given in before Extract, ordain them to furniſh the Defenders, or their Agents at the reſpective Places where ſuch Witneſſes are to be examined, with a Liſt of the Names, Deſignations, and Places of Abode of ſuch Witneſſes, and a Condeſcendence of the Facts to be proven by them, at leaſt fifteen Days before the Examination of ſuch Witneſſes: And ordain the Defenders to furniſh the Purſuers, or their Agents at the reſpective Places as aforeſaid, with a Liſt of the Names and Deſignations, and Places of Abode, of the Witneſſes propoſed to be adduced by them, at leaſt fifteen Days before the Examination of every ſuch Witneſs: And ordain each Party to furniſh the other with a Copy of Interrogatories upon which each Witneſs is intended to be examined, three Days at leaſt before the Examination of ſuch Witneſs; without Prejudice to either Party to put ſuch further Queſtions as may appear neceſſary in the Courſe of the Examination: And ordain the Parties, on or before the 6th Day of *Auguſt* next, to condeſcend upon the Places at which the Commiſſion is to be executed, and the Times propoſed for the Execution thereof at thoſe Places; and upon the Names of the Commiſſioners, and of the Agents, who are to be employed by them at theſe reſpective Places: And the Lords recommend to the ſeveral Judges of the ſeveral Kingdoms and Places under whoſe Juriſdiction this preſent Commiſſion ſhall be executed, if deſired by the Parties, or either of them, to iſſue the proper Compulſitories for bringing the Witneſſes to be condeſcended upon by the Parties before the Commiſſioners, in order to their Examination upon the Points in Iſſue; and grant Diligence, at the Inſtance of both Parties, againſt ſuch of the Witneſſes as may be under the Juriſdiction of this Court: And ordain the Seal of this Court to be appended to the ſaid Commiſſion."

These Words ordered by the Houſe of Lords to be added.

But while the Queſtion was thus agitated in the Court of Seſſion, the *Tournelle* Proceſs, under the Auſpices of Mr. *Andrew Stuart*, was carried on in *Paris* with amazing Zeal and Rapidity; and though the Procedure in *Scotland* might, at leaſt, have rendered him more cautious, it was in the very Heat of it, that the *Monitoire* made its Appearance.---A *Monitoire* is an Injunction, under eccleſiaſtical Authority, obliging all Perſons to reveal what they may know of a Crime committed, to the Curate of the Pariſh in which they live, incurring the Pain of Excommunication if they do not comply with the Terms of it.---The Defender has nothing to ſay againſt that Manner of inveſtigating ſecret Crimes, according to the Spirit of the *French* Law; and if it is once ſuppoſed, that the Queſtion of his State was fairly and regularly brought into the Court of *Tournelle*, a *Monitoire*, which ſhould not exceed the Bounds of the Laws and Ordinances of *France*, could ſcarce be called an irregular Proceeding: But, even in that Caſe, it was rather audacious to venture on the Demand of a *Monitoire*, at a Time when the Propriety of the Proceſs from which it ſprung was queſtioned; and when the Purſuers muſt have known the Indignation their Conduct had raiſed in *Scotland*.

But the *Monitoire* was no leſs contrary to the Laws and Ordinances of *France*, than Mr. *Andrew Stuart*'s Conduct in demanding it, at that Period, was contrary to Juſtice and the Reſpect he owed to the Court of Seſſion. It becomes neceſſary, therefore, to enter into a ſhort Diſcuſſion of it, that the Diſadvantages which it brought upon the Defender may fully appear. It conſiſts of four

four Heads: 1. Under the Deſignation of *un quidam* Ecoſſois, *ſa Femme, & la Demoiſelle de Compagnie*, there is inſerted a very minute Relation of the Conduct of Sir *John Stewart*, Lady *Jane*, and Mrs. *Hewit*, in *Holland*, at *Aix*, and at *Rheims*, from the Time of their Marriage to the Time they finally left *France*. 2. There is an Account of their *double Demeure* at *Godefroi*'s and at *Michel*'s, from *July* 8th to *July* 14th 1748; and that the Delivery at *Le Brun*'s was a Suppoſition, and an *Impoſture demaſquée*. 3. There is a poſitive Aſſertion, that the eldeſt pretended Twin was picked up at *Paris*, or in the Neighbourhood, in the Month of *July* 1748. 4. It contains a long Account of the *Enlevement* of *Sanry*'s Child, with all the Circumſtances and Dates as they had been ſettled between the Curate of St. *Laurent* and Mr. *Andrew Stuart*, and poſitively and ſolemnly applied to, and charged upon theſe Perſons who had lived in *Holland*, at *Aix*, or at *Rheims*, in the Manner above deſcribed.

The pernicious Conſequences of this Libel are glaringly obvious. The Hiſtory of Sir *John*, Lady *Jane*, and Mrs. *Hewit*, in *Holland*, at *Aix*, and at *Rheims*, could be of no Uſe to the Perſons who might have loſt a Child. For, if the Parents of the ſtolen Child had known any one Circumſtance of the Journey and Reſidence of the Perſons who ſtole him, the Child would have been found long ago. But theſe Facts ſerve to bring the Accuſation Home to Sir *John* and Lady *Jane*; to point them out as the guilty Perſons to every one who might have been an Hour in their Company in the Courſe of three Years; and to intimidate weak Minds, who might hereafter be called in Evidence to the Pregnancy or the Reconvaleſcence.

The ſecond Particular muſt have the ſame Effect, to intimidate thoſe who might have been preſent at the Delivery. It ſeems plainly calculated to prevent the Appearance of Mad. *Le Brun*, ſuppoſing ſhe had been alive, and that the *Monitoire* had come to her Knowledge; for ſhe muſt have thought that ſome Impoſtors had taken upon them the Circumſtances of the Lady who was delivered in her Houſe on the 10th of *July* 1748; as it could not be the ſame, becauſe the *Monitoire* poſitively aſſured her, that the Perſons pointed at were at *Godefroi*'s or at *Michel*'s on the 10th of *July*. She could not even have a Suſpicion that the Caſe in the *Monitoire* related to her, eſpecially as her Gueſts came from another Lodging in *Paris*; and it is great Odds if ſhe ever knew that they came from *Rheims*; the rather, that they quitted her Lodging in Diſguſt; not to return to *Rheims*, but to take another Lodging in *Paris*.

Arguing on theſe Principles, ſhe muſt have neglected the *Monitoire* as a Thing which no Way related to her, and with which ſhe had nothing to do. Beſides, if ſhe had revealed, how was the Defender to be benefited by her Revelation? It would have been taken by her Pariſh *Curé*, whoſe Duty it was to ſend it to the *Procureur-General*, and to ſend her Name and Deſignation to the Purſuers only. But from the general Tenor of the Purſuers Conduct, and by the Means of *François La Marre*, it is not improbable that they had taken effectual Methods to prevent her Appearance.

3. The Aſſertion, That the pretended eldeſt Twin was carried off in the Month of *July* from *Paris*, or the Neighbourhood, confined the Enquiry and Revelation to that Month: It led the Evidence into a Coincidence of Time and Circumſtances. Defect of Memory, or the leaſt Inclination to Biaſs, would naturally induce a Parent to apply the Loſs of his Child, happening ſome Months before or after, to the preciſe Month pointed out in the *Monitoire*. It ſerved to fix an indeterminate Evidence; and it related the Circumſtances of the *Enlevement* of *Sanry*'s Child, though that Diſcovery was already made. To carry the Coincidence ſtill farther, it deprived the Defender of the Means of proving many Facts, which might have thrown Light on theſe *Enlevements*, by the Diſcovery of others.

If the *Monitoire* had confined itſelf to a ſimple Enquiry into Facts---if it had contained no Deſcription of the Perſons, but in general enjoined all who knew any Thing of Madame *Le Brun* and *Pierre La Marre* on one Hand, or of the *Enlevement* of Children in 1748 and 1749 on the other, to reveal what they knew, it might have been juſtifiable on the Principles of *French* Law.--- But even in that Caſe it could not be approved of in the more liberal and equitable Spirit of the Laws of *Great Britain*.

As ſoon as the Defender was informed of the *Monitoire*, he put in a Petition to the Court of Seſſion the 3d of *Auguſt* 1763, reclaiming againſt the Interlocutor of the 27th of *July*, and complaining of the Publication of the *Monitoire* as irregular and unfair.---He concluded with praying, that their Lordſhips would alter the Interlocutor of the 27th of *July*, ſo far as to find, that the Witneſſes examined before the *Tournelle* were unhabile Witneſſes in this Cauſe, and could not be examined for the Purſuer; reſerving to the Defender to examine them if he ſhould ſee Cauſe.---2dly. To ordain the Purſuers to diſcharge the *Plaintes* brought by them in the *Tournelle*, before any Proof can be allowed by the Court, *&c.* And in an additional Petition of the 9th of *Auguſt* 1763, the Defender further prayed, that if the Court was not diſpoſed to reject altogether the Evidence of the Witneſſes examined before the *Tournelle*, or in *Revelation* by the *Curés* of the Pariſhes to which they belonged,

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they would ſuperſede giving any final Determination upon that Point, till the Proceedings ſhould be laid before them; or at leaſt to find, That the *French* Witneſſes could not be examined upon Commiſſion, but muſt be brought from *France* to be examined in their Lordſhips Preſence.

The Court, on adviſing theſe Petitions and Anſwers upon the 11th of *Auguſt* 1763, pronounced an Interlocutor, which, with the Alterations made upon the Appeal to the Houſe of Lords beforementioned, is as follows: "The Lords adhere to their former Interlocutor, with theſe Additions: That they appoint the Depoſitions of the Witneſſes who have been examined before the *Tournelle*, to be ſealed up ſeparate from the Teſtimonies of the other Witneſſes to be examined, and to tranſmit them ſo ſealed up, not to be opened by either Party without the Authority of this Court; reſerving to the Defender to object againſt theſe Examinations being made Part of the State: And find, That the Defender may examine any of the Witneſſes that may have been examined before the *Tournelle*, whether the Purſuers ſhall have complied with the Conditions of this or the preceding Interlocutor in the Cauſe or not: And find, That the Purſuers muſt procure free Acceſs to the Defenders, or their Agents [*to the Proof taken at Rheims before the Commiſſioners of the Parliament of Paris*; *and alſo*], to any Proof that may have been taken in *England* or *Scotland*, and to all Reports that have or ſhall be made by the *Curés* to the Parliament or *Procureur General*, in conſequence of the *Monitoire*, which the Purſuers have had Inſpection of, or are poſſeſſed of; and if deſired, ſhall join with the Defender in any Application for getting Poſſeſſion or Inſpection of them."

Interlocutor, Aug. 11. 1763.

Reverſed by the Houſe of Lords.

CHAP. VI.

The Purſuers Conduct in France *after the Interlocutors of the Court of Seſſion.*

ALTHOUGH the Defender had not been able to prevail with the Court of Seſſion to oblige the Purſuers to withdraw their *Plaintes* in the *Tournelle*, yet the Interlocutors above-mentioned had ordered them to proceed no further in it, and had decreed Diſability on every Witneſs examined there after the 10th of *Auguſt*.---This was in Effect, though with Abundance of Lenity, reprobating that Proceſs. It was ſome Satisfaction to the Defender for the Wrong he had ſuffered, and it ought to have been a Caution to the Purſuers to change their Conduct: But this was far from their Intention; and at the very Time they pretended a Willingneſs to execute the Interlocutors above mentioned, they took every underhand and unfair Meaſure to prevent their Execution.---The Taſk of procuring a Cancellation of the Proceedings in the *Tournelle*, or, if that was impoſſible, a Communication of them to the Defender, was enjoined them; and the Trouble and Expence, if any ſhould attend that, was the ſlighteſt Reprehenſion their Conduct deſerved. When the Agents of both Parties went to *Paris* to execute the Commiſſion, Mr. *Andrew Stuart* agreed to communicate to them the Steps he ſhould take in Purſuance of the Interlocutors above mentioned.

The firſt Step he took was a Requeſt preſented to the *Tournelle*, of this Date, wherein he ſtates the ſuppoſed Impoſture as an undeniable Propoſition; he recapitulates alſo the Proceedings, the ſeveral *Plaintes* and Informations taken upon them, which, together with the written Evidence found by him, and joined to the *Plaintes*, formed a complete Proof of the Impoſture; and that they appeared to the *Procureur-General* ſuch as to exact of him, in the Duty of his Office, very active Meaſures to explore, by all poſſible Ways, where the Children had been taken, and by whom (making not ſo much as a Doubt of their being really ſtolen); complaining of the Defender, for having repreſented the Proceedings in *France*, as the moſt ſevere and frightful for the accuſed, even though innocent, particularly in the ſecret Examination of Witneſſes; and that it had been ſaid, that Witneſſes whoſe Freedom was ſo locked up, deſerved no Credit; but he himſelf was fully convinced of the Impartiality and Juſtice of *French* Proceedings, of which he made a nauſeous Panegyrick; and to ſupport it aſſerted, that the Court of Seſſion was ſhocked, and declaimed (*s'écria*) at the Defender's Objections; however, doubtleſs *determined by the Uſuage of Scotland*, that Court had directed a Petition to the Parliament of *Paris*, for ſuch Purpoſes as the Interlocutor mentions; therefore being bound to execute the Decrees of his natural Judge, he prays, not as if he meant to be heard, that the Depoſitions may be cancelled, or the Procedure exhibited; or, if that cannot be, that the Agents of the Defender may be permitted to ſee the Whole, *ſaving the Purſuers Rights and Actions againſt the Authors and Accomplices of the Suppoſition of the Birth in Queſtion.*

In this Manner did he execute the Order of the Court of Seſſion. But not to mention how partially and invidiouſly this State of the Caſe repreſented the Objections made in the Court of Seſſion to the Proceedings in the *Tournelle*; how complainingly it revealed the Compulſion under which the Purſuers acted, with a faint Apology for their natural Judges, as they call them; the Requeſt only prayed for an Alternative, the Cancellation *or* Inſpection of the Depoſitions; whereas they were expreſsly ordered to demand both; and though they

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knew that without Cancellation the undue Impreſſion they had made upon the Witneſſes could not be removed: But above all, the Concluſion of their Requeſt counteracts the pretended Purpoſe of it, by a ſaving their *Rights and Actions*.---The Cancellation could not be obtained conſiſtently with that Saving, and the Inſpection was repugnant to it, as they had taken Care to make it well underſtood beforehand, that the Secrecy was for their Benefit.---If they had really intended to execute the Interlocutor of the Court of Seſſion with good Faith, they would have ſimply prayed for the Cancellation, without ſhewing ſo evidently, that they would have been ſorry had it been granted; and that Petition being refuſed, they were not hindered from preſenting another to the Purpoſe of Inſpection; and the ſaving Condition plainly ſhewed, that they intended to perſiſt in the *Tournelle* Proceſs, becauſe it could not poſſibly refer to any other.

Upon this Requeſt, the *Procureur-General* gave his Concluſions; but what theſe Concluſions were, no one can tell, for they are ſtill locked up in the *Tournelle*: But conſiſtently with the reſt of the Purſuers Conduct, they did not communicate this Requeſt to the Defender's Agents, till a Week after it was preſented. And the Judges of the *Tournelle* having remitted the Parties to the King, as they had no Power to alter the eſtabliſhed Ordinances of the Kingdom, Mr. *Stuart* preſented another Requeſt to the King and Council upon the 12th of *September*.---He preſented a third on the 26th of *September*; and a fourth on the 24th of *October*; in all which, the Facts were alſo partially ſtated, Difficulties were ſuggeſted, and the Whole repreſented in ſuch a View as ſhewed no Deſire in the Purſuers to comply with the Order of the Court of Seſſion; but on the contrary, to continue the Proceedings before the *Tournelle*.

Whilſt Mr. *Stuart* was amuſing the Defender's Agents with theſe ſhadowy Attempts to execute the Interlocutors of the Court of Seſſion, another Incident happened, which diſcloſes in a more palpable Manner his real Purpoſe. It was thought dangerous for the Commiſſioners appointed by the Court of Seſſion to proceed to examine the Witneſſes, and chiefly thoſe who had been examined in the *Tournelle*, without an expreſs Authority under the great Seal of *France*; to obtain which, the Ducheſs of *Douglas* and Mr. *Andrew Stuart* jointly applied to the Keeper of the Seals for a *Pareatis*, which they accordingly obtained; and till the Clerk to the Commiſſion ſhould be appointed, it was lodged by common Conſent, and for the common Benefit, in the Hands of Mr. *D'Anjou*, who had been a very Active Agent under *Stuart*, in all the Proceedings above ſtated.

The *Pareatis* was obtained the 14th of *September*, and one Step or another was daily taken to advance the Execution of the Commiſſion; many Meetings were held, and Mr. *Stuart* appeared diſpoſed to concur in every equitable Meaſure: But on the 3d of *October* the Defender learnt that the *Pareatis* had been delivered back to the Chancellor above a Fortnight before by Mr. *Doutremont*, a Counſel for the Purſuers.---How this Matter was brought about, that a ſealed Writ, iſſued by full Authority for the Benefit of both Parties, ſhould be delivered without the Communication or Privity of one, is ſtill a great Myſtery: But Mr. *Andrew Stuart*'s Conduct is none; he wanted to evite the Commiſſion, and to continue the *Tournelle* Proceſs; otherwiſe, why amuſe the Defender with preparing for executing the Commiſſion, when he knew the Authority on which it only could be executed was recalled?

The Defender's Agents, juſtly ſurpriſed at this very extraordinary Circumſtance, wrote to Mr. *Stuart* to know whether it was true, and why it was ſo; but in Terms, it ſeems, which offended his Dignity, and he diſdained to give them the leaſt Satisfaction: Upon which they proteſted againſt him in Form, and about a Week after he communicated to them a ſtrange Story, narrating that Mr. *Doutremont*, being accidentally at *Verſailles* on a Viſit to the King of *Poland*, was called into the Cabinet, where the Chancellor was ſitting in Council; who intimated to him, that there was to be another Council next Day, and required him to produce, for the Peruſal of that Council, the original Letters of *Pareatis*, and inſiſted that it ſhould be put into his the Chancellor's Hands by ten o'Clock next Morning; and in Conſequence of which it was accordingly ſent by Expreſs.

This was, to ſay the leaſt, a very ſingular Manner of recalling an Order under the Great Seal. But allowing it to be a Fact, it might have been expected that Mr. *Stuart* would have adviſed the Defender of it; or if the Time was too ſhort for Communication before the *Pareatis* was ſent to the Chancellor, it was Something extraordinary that no Mention ſhould have been made of it for a whole Fortnight after; and for a Fortnight after that did Mr. *Stuart* delay giving him the Satisfaction, even of the Story of *Doutremont*'s Viſit to *Verſailles*.

Things remained in this unhinged Situation for about ten Days longer, when the Defender's Agents, who ſaw themſelves abuſed in every Step of the Procedure, and that the Purſuers not only calculated their Applications to the Court of *Tournelle*, and to the King and Council, ſo as to fall ſhort of the Terms preſcribed by the Court of Seſſion, but alſo counteracted by underhand Dealings their own publick Profeſſions, which, even in the moſt favourable Way they could be taken, laboured by injurious Declamation to create a Prejudice againſt the Defender's Cauſe, and

to

to repreſent the Laws and Parliament of *France* as attacked and requiring Vindication: For this Reaſon the Defender was adviſed to preſent a Requeſt to the King and Council, acknowledging the Wiſdom of the *French* Laws, and the Reſpect due to the Parliament of *Paris*; but inſiſting that both had been abuſed by the indirect Conduct of the Purſuers, from which alone they had drawn the moſt unfair Advantages; and repreſenting that the Court of Seſſion, as confeſſedly the only competent Court to try the civil Queſtion, was, in Conſequence, the only competent Court to judge of the Conduct of the Suiters before it. That this Court had condemned the Purſuers Conduct, the *Requête* concluded with a Prayer for the Cancellation of the Depoſitions, and the Inſpection of the reſt of the Procedure.

Mr. *Andrew Stuart* thought proper to anſwer this Requeſt. He exclaimed againſt it as an Inſult to the Laws of *France*, and ſet himſelf to prove that the criminal Courts of that Kingdom had a Power to puniſh Crimes committed; maintaining, againſt Truth, that this Poſition had been denied in the Defender's Requeſt: But in the End he acceded to the Prayer for Cancellation and Inſpection, though with the old Reſervation of his *Rights and Actions*, which was plainly defeating all that went before, and ſupporting the *Tournelle* Proceſs in the very ſame Sentence he pretended to relinquiſh it.

By ſupporting ſo zealouſly the Rights of the *French* Tribunals, and by making it believed that the Defender's Demands went to the leſſening their Authority, he prevailed on the Council to give an *Arrêt*, dated *October* the 28th, whereby they ordered that the criminal Action ſhould be proſecuted in the Chamber of *Tournelle* to *definitive Judgment and Execution*, nevertheleſs; having Regard to the Suit of the Parties after the definitive Judgment ſhall have intervened, and been executed againſt the Accuſed, by Contumacy or otherwiſe, there ſhall be made Expedition of the Proceſs in full by the *Greffier* of the Chamber, to be ſent ſealed to the *Greffe* of the Court of Seſſion in *Scotland*, to ſerve ſuch Uſe as that Court ſhall think proper in the civil Action depending before it; and alſo giving a new Commiſſion to *French* Counſel to execute the Commiſſion of the Court of Seſſion for taking the Proof by Witneſſes.

This *Arrêt*, procured by the Purſuers Management, defeated all the Defender's Hopes of executing the Commiſſion of the Court of Seſſion: And as his Counſel were of Opinion, that they could not proceed to take the Proofs in the Manner directed by the *Arrêt*; therefore, after taking a Proteſt againſt Mr. *Stuart*, they left *Paris* and returned to *Scotland*, where they laid the whole Proceedings before the Court of Seſſion, in a Petition dated the 1ſt of *December* 1763, and prayed the Court to find, That there could be no Procedure within the Dominions of *France*, upon the Commiſſion of the Court of Seſſion as new modelled by the *Arrêt*, and immediately to diſcharge the Purſuers, and Mr. *Andrew Stewart* their Agent, from proceeding to examine any Witneſſes upon their Peril, and to give ſuch other Redreſs as ſhould ſeem to their Lordſhips juſt.—While this Queſtion remained undetermined, the Court pronounced an Order in the Form of an Interdict, diſcharging the Purſuers to begin taking their Proof till the Queſtion ſhould be adviſed.

The Purſuers alſo applied to the Court by Petition the 3d of *December*, praying that a new Commiſſion might iſſue, without any of the Conditions annexed to the former, upon a Suggeſtion that they had tried fairly, and could not get them executed.

The Court by Interlocutor of this Date removed "the Interdict pronounced upon the 9th Inſtant, and allow the Proof upon the Act and Commiſſion formerly granted to proceed, [*with and under the Conditions therein contained*], after Intimation of this Interlocutor to Mr. *Alexander Macconnochie* Writer in *Edinburgh*, or any of the Defender's Lawyers at *Paris*, formerly authoriſed to act as Commiſſioners in taking the Proof in this Cauſe, or to any other known Agents or Doers for the Defender at *Paris*, ſuch Intimation being always made to the ſaid *Alexander Macconnochie*, Lawyers, or Agents, perſonally, or by leaving a Copy of this Judgment at any of their reſpective Dwelling-houſes, fourteen Days preceding the Examination of any Witneſs, without Prejudice to the Parties taking the neceſſary preparatory Steps before the actual Examination after the ſaid Intimation, [*but with this further Explanation, that before the Proceeding to the Examination of any Witneſſes, who have already been or ſhall hereafter be examined in the Tournelle Criminelle of the Parliament of Paris, either at the Inſtance of the Procureur-General, or at the Inſtance of the Purſuers, the Purſuers ſhall be obliged to comply with the Conditions contained in the former Act and Commiſſion*]; and ordain the Purſuers and their Doers, betwixt and the firſt of *January* next, to produce in the Hands of the Clerk to this Proceſs Copies of the whole *Plaintes* given in by Sir *Hew Dalrymple*, and in the Name of the Duke of *Hamilton* and his Tutors, or either of them, to the *Tournelle Criminelle* of *Paris* on or ſince the 16th of *December* 1762. Appoint the Clerk of this Court to furniſh the Purſuers with an Extract hereof, to enable them to make due Intimation hereof in Manner above ſet forth; and for that Effect diſpenſe with the reading hereof in the Minute-Book; and with reſpect to the whole other Points in the aforeſaid three Petitions, refuſe the Deſire thereof."

Interlocutor, 21 Dec. 1763. Ordered to be left out.

Theſe words ordered by the Houſe of Lords to be left out.

After this Interlocutor the Purſuers proceeded, under the *French* King's Authority, to execute the Commiſſion; and, without Regard to the preliminary Conditions, till they were ſtopped by an Appeal to the Houſe of Lords, who were pleaſed to alter the Interlocutors of the Court of Seſſion in the Particulars before ſtated; and ordered, that the Conſideration of the Coſts occaſioned by the Proceedings at *Paris* be reſerved till the hearing of this Cauſe.

21ſt of July 1764. Thereafter a Petition was put into the Court of Seſſion, praying the Application of the Interlocutors as varied by the Houſe of Peers; which was accordingly done by Interlocutor of this Date. ---In this Manner was the *Tournelle* Proceſs huſhed, and the Proof proceeded from this Period without Interruption.---The particular Arts made Uſe of by the Purſuers, to miſlead Witneſſes, will be mentioned in their proper Places.

The Defender will next proceed to ſtate the principal Parts of the Evidence, and Arguments in Law inſiſted on by both Parties in their Pleadings and Memorials, referring to the Pages of the printed Copies of the Proofs given in by Order of the Court.

PART

PART II. BOOK I.

LADY *Jane*, when in Poſſeſſion of the Affections of her Brother, was often preſſed by him to marry:—She was courted by ſeveral Perſons of high Rank and Fortune; but their Addreſſes proved ineffectual, from different Cauſes.

In 1746 Lady *Jane*, when in the forty-eighth Year of her Age, accepted of Propoſals of Marriage from *John Stewart*, Eſq; afterwards Sir *John Stewart* of *Grandtully*, Bart. and was privately married to him on the 4th of *Auguſt* that Year. D. P. 999. B.

Sir *John Stewart* was in the fifty-eighth Year of his Age, when he married. He was well looked, his Manner chearful and engaging; and although he was known to be thoughtleſs and inconſiderate to a high Degree, yet he was eſteemed by his Acquaintances to be a Man of Honour, incapable of committing Fraud, and unfit from his natural Diſpoſition to conduct any fraudulent Plan or Scheme.—When he married Lady *Jane* he was poſſeſſed of no Eſtate whatever, but was Heir expectant in Tail to his Brother Sir *George Stewart* of *Grandtully*, who enjoyed a Land Eſtate of about 1000 *l. per Annum*, was in a valetudinary State, and had no Proſpect of Iſſue. P. P. 337. H. —— 339. I.

Lady *Jane* was rather under the middle Stature, and ſlender in her Perſon, but had a noble and graceful Deportment, was amiable in her Manners; and having been bred under the Tuition of her Mother, remarkable for her Piety and Religion; ſhe poſſeſſed all her Mother's Virtues, and was univerſally admired and eſteemed.

Sir *John Stewart* had been formerly married to a Daughter of Sir *James Mackenzie* of *Royſton*, by whom he had a Son *John*, who ſucceeded his Father in the Eſtate of *Grandtully*; and when he married Lady *Jane*, there was a reaſonable Proſpect of Iſſue from the Marriage; becauſe it has been aſcertained beyond a Doubt, that ſhe was in the full Capacity of having Children; and that ſhe remained in that State of Habit to near the Time of her Death.

Lady *Jane*'s only Fund of Subſiſtence was an Annuity of 300 *l.* allowed her by her Brother. As this was inſufficient to ſupport her and her Huſband in a decent Manner at Home; and as ſhe had no Reaſon to expect that her Brother was in a Diſpoſition to be reconciled to her Marriage, if ſhe had made it known to him; ſhe and her Huſband did therefore come to the Reſolution of keeping their Marriage a Secret, and of going abroad for ſome Time, as the beſt Means for that Purpoſe, and of enabling them to live with any Degree of Comfort upon their ſcanty Income; and the Place fixed upon for their intended Reſidence was *Aix-la-Chapelle*. —— 31. L.

Lady *Jane* and Sir *John Stewart*, the better to conceal their Marriage, went out of *Scotland* ſeparately. Lady *Jane* was attended in her Journey by Mrs. *Helen Hewit*, who was ſome Years older than herſelf, and had long lived with her in her Mother's Family; and likewiſe by two Maid-Servants, *Iſabel Walker* and *Effy Caw*; and Sir *John Stewart* met them in *England*, at *Huntington*; from whence they ſent Mr. *Colvil*, who had accompanied Lady *Jane* in her Journey to *London*, to procure a Paſs for their going into *Holland*, which he accordingly obtained. The Paſs was taken out for Lady *Jane*; and beſides Mrs. *Hewit* and the two Maids, it comprehended Mr. *Stewart* and one *James Johnſtone*, a Relation of Mrs. *Hewit*'s, in the Character of Servants to Lady *Jane*; and who paſſed under the Names of *James Kerr* and *John Douglas*. The ſaving a Fee of two Guineas, which was exacted for the Paſs of every Gentleman, the avoiding Suſpicion of the Marriage, and a Paſs being more eaſily got for a Lady than Gentlemen, were probably the chief Reaſons which induced the changing of Names and aſſuming the Character of Servants. Serv. 6. D. P. P. 29.

Upon their Arrival in *Holland*, they went directly to the *Hague*, where they were diverted from proſecuting their original Intent of going to *Aix-la Chapelle*, by the Report of many Robberies having been committed on the Road, from that Country having become the Seat of War. Lady *Jane* therefore applied to Mr. *Trevor*, the *Engliſh* Reſident at the *Hague*, to procure her a Paſs to go to the Waters of *Bourbon* in *France*, which was repreſented to her as a cheap and agreeable Place to live at; but the Paſs could not be eaſily obtained. —— 31.

While at the *Hague*, they hired one of the Name of *Lambinon*, as a Man-Servant, and they became acquainted with Mr. and Mrs. *Hepburn* of *Keith*, a *Scotch* Gentleman and Lady; Mr. *Trevor*, the *Britiſh* Reſident; Mr. *Keith*, Secretary to Lord *Sandwich*; and many other Perſons, in whoſe Company they were happy; inſomuch that Lady *Jane* expreſſed Regret when obliged to leave the Place, on Account of its affecting her Health by its Dampneſs. About the End of *December* D. P. 505. B. Serv. 8. G.

cember 1746, they went to *Utrecht*, where they became acquainted with the late Lord *Blantyre*, Mr. *Dalrymple*, Mr. *Hay*, and other Gentlemen from *Scotland*.

P. P. 996. c. Lord *Blantyre* went from *Utrecht* to *Aix-la-Chapelle* about the Beginning of *April* 1747, and entered to his Lodgings in the Houſe of Mad. *Tewis* on the 4th of that Month. Lady *Jane* and her Family immediately followed him, and hired Lodgings in the ſame Houſe upon the 26th of *April*.

P. P. 32. c. As Mad. *Tewis* was a Woman of more Faſhion and Conſideration in the Place, and in better Circumſtances than thoſe commonly are who keep Lodging-Houſes, and of an exceeding good Character, Lady *Jane* became intimate with her, and ſhe was early let into the Secret of the Marriage; which became in ſome Meaſure unavoidable, from Sir *John*'s living in the Houſe.

—— 29. D. But it was for ſome Time kept a Secret from all others, excepting Mrs. *Hewit*, who had been a Witneſs to it, and the Maid-Servants, to whom it had been early made known.

Lady *Jane* and Sir *John Stewart* lived in Mad. *Tewis*'s Houſe from their Arrival till the 10th of *Auguſt* following, when they went to *Spa* for a Fortnight; about which Time their Servant *Lambinon* left them, and they engaged another, *Pierre Quibel*, in his Place, who continued with them till *May* 1748. Their principal Acquaintances at *Aix*, during this Period, were, Lord *Blantyre*, the Counteſs of *Baſſewitz*, Mad. *Negrette*, then Baroneſs *D'Obin*, and her Huſband, Sir *William Stewart* and his Lady; with all whom they lived in great Friendſhip, though none of them were informed of the Marriage.

Min. p. 5. G. The Counteſs of *Baſſewitz* went to *Spa* with them, where ſhe left them, and went to her own
D. P. 161. c. Houſe, and Sir *William Stewart* and his Lady likewiſe left them at *Spa*, with an Intention of going into *Italy*, but they afterwards changed their Mind, and went to *Paris*. When Lady *Jane* and Sir *John Stewart* returned to *Aix*, they lodged ſome ſhort Time at Mad. *Champinoi*'s, and returned to their old Apartments at Mad. *Tewis*'s the 14th of *September*.

—— 18. c. In *October* 1747, Lady *Jane* became pregnant, which was ſoon diſcovered by Mad. *Tewis*,
—— 485. G. Mrs. *Hewit*, and the Maid-Servants, from Lady *Jane*'s being afflicted with thoſe Ailments peculiar to Ladies in her then Situation, and from other ſecret Marks which muſt be known to her
Min. p. 11. G. Attendants. And it was likewiſe obſerved by Lord *Crawford*, who had come from the Army to
D. P. 963. G. reſide at *Aix* for the Winter, and who ſpoke of it to Mr. *Stewart*; his Lordſhip having been
P. P. 251. R. previouſly informed of the Marriage.

D. P. 24. B. On the 5th of *January* 1748, it became neceſſary for Lady *Jane* to leave Mad. *Tewis*'s Houſe,
—— 3. c. as it was let to Lord *Sandwich*, Plenipotentiary from the Court of *Britain* to the Congreſs then to be held at *Aix-la-Chapelle*, and Mad. *Tewis* took Lodgings for her and her Family in the Houſe of Mad. *Scholl*.

Although Lady *Jane* found her growing Pregnancy, and herſelf in that State that it muſt be diſcovered by every diſcerning Eye, yet the Apprehenſion of additional Expence from making her Marriage publickly known, made her reſolve to continue in her Plan of concealing it and her Pregnancy as long as poſſible: But her Endeavours as to the laſt were in vain, for her Pregnancy became ſuſpected, and believed by almoſt all her Acquaintances at *Aix*, and by Mad. *Scholl* among others, although ſhe was ſeldom ſeen by her.

—— 2. B. The approaching Seaſon of the Waters at *Aix*, and Congreſs there, had the Effect of raiſing the Rent of Lodgings ſo much about the End of *March*, as to oblige Lady *Jane* to remove with her Family to very mean and inconvenient Lodgings in the Houſe of one *Gilleſen*, becauſe ſhe could not afford to pay the Rent that was offered by others for the Lodging ſhe was then in.

Lady *Jane* and Sir *John Stewart*, diſſatisfied with their Lodgings, and foreſeeing the additional Expence they muſt be put to, by living in a Town ſo much crouded, and where all Kinds of Proviſions had become exceedingly dear, they, by the Approbation of Lord *Crawford*, came to a Reſolution of going to *Geneva*; and his Lordſhip propoſed to ſend with them a Servant and Horſes to his Relation Lord *Garnock*, then at *Milan*, and propoſed when he went to the Army to get
P. P. 561. them Paſſes for going through a Part of *France* by *Luxemlourg*.

—— 998. G. Lord *Crawford* left *Aix-la-Chapelle* about the 10th of *April*, and upon coming to the Army, found it more difficult to obtain the neceſſary Paſſes than he had imagined; which retarded their carrying into Execution their Intention of going to *Geneva*: On the 30th of *April* the Preli-
D. P. 486. c. minaries of Peace were ſigned, which opened the Roads every where, and ſuperſeded the Neceſſity
—— 487. G. of Paſſes.

——962, 963. Before Lord *Crawford*'s leaving *Aix-la-Chapelle*, Lady *Jane* came to the Reſolution of making her Marriage and Pregnancy known to her Brother, which ſhe did in a Letter dated the 10th of *April*, and which Lord *Crawford* tranſmitted in a Letter of his own to the Duke, wherein he likewiſe informed his Grace of the Marriage and Pregnancy.

While

While Lady *Jane* and Sir *John Stewart*'s Intentions of going to *Geneva* were ſuſpended by the Want of Paſſes, a Propoſition was made to them by Mad. *Tewis* about procuring the Uſe of a *Chateau*, called *Bedbour*, for their reſiding in, and which belonged to the Count *de Salme*; and was diſtant about nine Leagues from *Aix-la-Chapelle*. This Propoſition was at firſt agreeable, but as the Uſe of the *Chateau* was to be procured from the Count's Bailiff, who declined to grant it without the Permiſſion of the Count himſelf, who was then at *Vienna*, it became a Matter not to be relied upon, as the Pregnancy and other Circumſtances preſſed their immediate Departure from *Aix*, and therefore they recurred to their original Intention of going to *Geneva*; but inſtead of going by *Luxembourg* they propoſed to go by *Rheims*, where they were told they might ſtop, the Event of a longer Journey being inconvenient. They accordingly left *Aix* the 21ſt of *May*. D. P. 16. B.

At *Liege* they reſted ſome Days, where they ſaw ſeveral of their Acquaintances, particularly Mr. and Mrs. *Hepburn*, with whom they had become acquainted at the *Hague*; and the Pregnancy was obſerved by all of them.---Amongſt the Perſons whom they ſaw at *Liege*, was Chevalier *Douglas*, to whom Sir *John Stewart* communicated the Intention of Lady *Jane*'s probably continuing at *Rheims* until ſhe was brought to-bed; who thereupon adviſed Mr. *Stewart* to carry her to *Paris*, as her Delivery might be attended with Danger at her advanced Time of Life: But the Advice was not much attended to at that Time. D. P. 501. B.

Upon the 25th of *May* they left *Liege*, and proceeded to *Sedan*; where Lady *Jane* finding herſelf ſomewhat fatigued, continued till the Stage-Coach ſhould go from thence the Week following, when they proceeded to *Rhetel*, where Lady *Jane* found herſelf ill upon her Arrival; but recovering in the Morning, they proceeded to *Rheims*, where, by the Aſſiſtance of Mr. *Andrieux*, they were provided in a Lodging, which they took by the Month, and with a Reſolution, it would appear, of continuing there.

Lady *Wigton* came to *Aix-la-Chapelle* ſome Time before their leaving it; and Lady *Jane* being intimately acquainted with her, preſſed her to go along with them; and after their Arrival at *Rheims*, Lady *Jane* wrote Lady *Wigton*, and again preſſed her to come there, as a cheap and agreeable Place.---The Day after their Arrival, Mr. *Stewart* wrote Lord *Crawford* of their Reſolution to ſtop at *Rheims*, and requeſted his Lordſhip to make good his Promiſe, by making Lady *Jane* a Viſit in his Way to the Waters of *Barege*: And Mr. *Stewart*, at the ſame Time, wrote Mr. *Florentine*, at *Aix*, of his Friend Mr. *Andrieux* having provided them in an agreeable Lodging, and that they would probably remain there a conſiderable Time. Serv. p. 27. C. P. P. 572. 1. Letter produced, but not printed.

After being ſome Time at *Rheims*, Lady *Jane* learned from Mad. *Andrieux*, the Wife of Monſ. *Andrieux*, to whom they had been recommended, that the Midwives and *Accoucheurs* of *Rheims* were reputed unſkilful; and that People of Faſhion, when apprehenſive, either ſent for an *Accoucheur* from *Paris*, or went to *Paris* to be delivered, when they did not chuſe to be at that Expence. This Suggeſtion, and the Advice formerly given by Chevalier *Douglas*, made them come to the Reſolution, about the 25th of *June*, of going to *Paris*; and they communicated their Intention by Letters to Mrs. *Hepburn* and Lady *Wigton*, and aſſigned the Unſkilfulneſs of the *Accoucheurs* at *Rheims* for doing ſo. Serv. p. 11. G. Min. p. 6. C. D.P. 54. B.

When at *Rheims*, Lady *Jane* and Sir *John Stewart* became acquainted with Meſſ. *Maclean* and *Mackenzie*, two *Britiſh* Officers, who were Priſoners there upon Parole, untill they ſhould be releaſed or exchanged. And here again the Pregnancy was remarked.

Sir *John Stewart* being uncertain, at leaving *Aix-la-Chapelle*, where they might ſtop, took a Bill for what Money he had upon a Banker at *Paris*, which would be ſaleable in any Town whatever; and when at *Rheims* he avoided ſelling of the Bill, as his carrying it to *Paris* might be a Means of introducing him to the Banker upon whom it was drawn, and of getting Credit, if he ſhould have Occaſion to draw for Part of Lady *Jane*'s Annuity before it became due, which probably would be the Caſe.

Not having a Sufficiency of ready Money for the *Paris* Journey, if the whole Family was to go there, and probably apprehending that the two Maids could not be uſeful to them upon their firſt Arrival, or finding no Place in the Stage-Coach for them, they came to the Reſolution of leaving them ſome Time at *Rheims*; and they and Mrs. *Hewit* ſet out for *Paris* in the Stage-Coach upon the 2d of *July*, and arrived on the 4th at the *Hotel de Chaalons*, kept by one *Godefroi*, to whom they had been recommended by Mr. *Maillefer*, a Gentleman of *Rheims*, where they continued till the 7th. Serv. p. 12. B.

Upon the 5th of *July*, Sir *John Stewart* wrote to Baron *Macelliget*, Huſband to Lady *Wigton*, informing him of Lady *Jane*'s ſafe Arrival at *Paris*; and the ſame Day he preſented his Bill to the Banker, and received Payment of the moſt conſiderable Part, having only in his Pocket one *Louis d'Or* upon his Arrival at *Paris*: But the Banker refuſed to advance Money upon Lady *Jane*'s

Annuity; and Sir *John Stewart*, finding or apprehending Want of Money, requeſted Mr. *Andrieux*, by a Letter, to advance him 25 or 30 *Louis d'Ors*; to which Mr. *Andrieux*, by a Letter in Courſe, agreed, and ſoon after ſent the Money.

Sir *John Stewart* became acquainted with one *La Marre*, an *Accouchcur*, and engaged him to attend Lady *Jane* at her Delivery.

Godefroi's Inn being noiſy and inconvenient for a Woman in Lady *Jane*'s Situation, they re-
P. P. 252. E. moved from it upon the 7th of *July*, and went to the Houſe of one *Le Brun*, to which it is pro-
bable they were recommended by *La Marre:* And Lady *Jane* was there delivered by *La Marre*
Serv. p. 12. C. of the Appellant and his Brother, in Preſence of Mad. *Le Brun* and her Daughter, a Widow who lived in the Houſe, and Mrs. *Hewit*.

The youngeſt Child was very weak when born, and was ondoyed or ſprinkled by the *Accoucheur*, agreeable to the Cuſtom of *France* in ſuch Caſes; but having got a good Nurſe for him in the Neighbourhood of *Paris*, he did well, and remained there ſixteen Months, under the Direction of *La Marre*, the *Accoucheur*. The Appellant, being a ſtrong and healthy Child, was kept in the Houſe, but was more unfortunate in his Nurſes; however, at laſt, a good one was got.

Serv. p. 12. D. Mad. *Le Brun*'s Houſe having Bugs in it, they diſtreſſed Lady *Jane* very much, which made
P. P. 17. E. her reſolve to leave the Houſe as ſoon as ſhe could with Safety; and accordingly, upon the 20th of *July*, ſhe removed to the *Hotel D'Anjou*, kept by *Michel*, a Wig-Maker.

It appears, that on the 21ſt of *July*, Sir *John Stewart* and Mrs. *Hewit* wrote Letters to ſeveral of
D. P. 350. B. their Friends, giving them an Account of Lady *Jane*'s Delivery; and in theſe Letters they deſcribe
P. P. 298. D. the eldeſt Boy to be ſtrong and healthy, but unlucky in his Nurſes; and the youngeſt Boy to be puny,
Serv. 7. A. but fortunate in a good Nurſe.
P. P. 372. E.

Lady *Jane*'s recovering Strength very ſlowly, by Reaſon of the Air of *Paris* at that warm Seaſon of the Year, ſhe was adviſed by *La Marre* to go into the Country; and accordingly they went to *Dammartin* about the 3d or 4th of *Auguſt*, where they ſtaid near two Weeks: And Lady *Jane* having recovered ſo much as to be fit for a Journey, they went to *Rheims*, and carried the Defender, and a Nurſe they got for him at *Dammartin*, along with them; the Nurſe who went from *Paris* to *Dammartin* having refuſed to go with them.

P. P. 63 *. On the 7th of *Auguſt* Lady *Jane* wrote to her Brother the Duke, informing him of her Delivery on the 10th of *July*, of two Sons; the one ſtrong and promiſing, the other weak, and little to be depended upon. And when at *Rheims* they did, upon different Occaſions, and to different Perſons, mention the State of the Children when born, the Day of their Birth, the Name of the *Accoucheur*,
D. P. 362. B. and the Place near *Paris* where the youngeſt Child had been put out to Nurſe under the Direction
—— 388. G. of *La Marre*.

Lady *Wigton* had promiſed to be Godmother to the Appellant, and his Baptiſm was delayed till her Arrival at *Rheims*, when it was publickly performed in one of the Churches of that City, upon
Serv. p. 27. G. the 15th of *September* 1748; Lady *Wigton* and Madame *Andrieux* aſſiſting as Godmothers; Lord *Blantyre* and Baron *Macelligot* as Godfathers.

D. P. 597. D. In *October* following Mr. *Stewart* went to *Paris* along with Baron *Macelligot*, on Purpoſe to ſee the youngeſt Child; and carried Cloaths with him for the Child, which had been made in the Family at *Rheims*.---Baron *Macelligot* was prevented from ſeeing the Child by Indiſpoſition;
D. P. 354. A. but Mr. *Stewart* reported to him, after viſiting the Child, that he was doing well, or upon the mending Hand, as Baron *Macelligot* has expreſſed it.

P. P. 343. T. Lady *Wigton* went to *Paris* in Spring 1749, and promiſed to Lady *Jane* to go and ſee *Shelto* as ſoon as ſhe was able; and Lady *Jane* begged that ſhe would write her a particular Account how he was, and how taken Care of.---Lady *Wigton* was examined as a Witneſs in the Service upon Commiſſion, when in a bad State of Health, and in Bed, and ſhe died ſoon thereafter; and no Queſtion was put to her as to her ſeeing the youngeſt Child; and therefore her ſeeing of him reſts
Serv. p. 51. F. entirely upon the Probability of the Fact. But Lord *Blantyre*, who was in *Paris* about the ſame Time, did ſee the Child.

Mr. *Haldane*, a Creditor of Lady *Jane*'s, believing the Duke's Obligation for her Annuity to be abſolute, attached the Annuity by Arreſtment to operate his own Payment, which gave Offence to the Duke, and he withdrew the Annuity, which depended upon his Will.---This threw Lady *Jane* and her Family into the greateſt Diſtreſs; and the only Reſource ſhe had was to apply to her Friends for a Loan of Money.---This ſhe did, and got 350 *l.* from Lord *Morton*, and who adviſed
D. P. 240. B. Lady *Jane* immediately to come to *Britain*.---They received the Money at *Rheims*, upon the 2d of
—— 258. H. *November* 1749.---On the 3d they ſet out for *Paris*, to bring the youngeſt Child to *Rheims*; and on
—— 257. D. the 13th they returned with him to *Rheims*, from whence, after diſcharging their Debts, paying

and

and receiving all ceremonial Viſits of Departure from their Friends, who had uſed them with great Civility and Reſpect, they ſet out for *England* on the 29th of *November*; and after ſtaying ten Days at *St. Omer*, and fourteen at *Dunkirk*, they arrived in *London* about *Chriſtmas* 1749.

Soon after their Arrival in *England*, the youngeſt Child, who had only been ondoyed by the *Accoucheur*, was formally baptiſed by the Name of *Sholto*, in Preſence of Lady *Wigton* and others.

The Money received from Lord *Morton* was ſoon exhauſted by diſcharging Debts at *Rheims*, and defraying the Expence of their Journey. And as Sir *John Stewart* had formerly contracted ſome Debts in *London*, and was obliged to contract more for the Support of the Family, he was, in a few Months after his Arrival in *London*, arreſted by his Creditors and impriſoned, where he remained for near three Years.

In *Auguſt* 1750, Lady *Jane* was relieved from her Diſtreſs of Poverty in Part, by his late Majeſty giving her a Penſion of 300 *l.*---And the Letter ſhe wrote to Mr. *Pelham*, ſoliciting that Penſion, affords Evidence of thoſe noble Sentiments ſhe was univerſally believed to poſſeſs. D. P. 970.—

Lady *Jane* knew that her Brother had long been diſobliged with her, and had taken much Offence at her Marriage; but ſhe was entirely ignorant of the ſcandalous Falſehoods taken Notice of in a preceding Part of the Caſe, which had been propagated to make the Duke believe that ſhe was not the Mother of the Appellant and his Twin-Brother, and of theſe Reports having made an Impreſſion upon his Mind.

In *May* 1752, Lady *Jane* was informed, by a Letter from Mrs. *Carſe*, that *Archibald Stuart*'s Wife had ſaid that the Duke would never own her Children; and having received other Information as to *Archibald Stuart*'s reporting Stories to her Prejudice,---ſhe and Sir *John Stewart* firſt thought of proſecuting him: But upon their adviſing further with their Friends, it was judged proper and reſolved, that ſhe ſhould go to *Scotland* to enquire more particularly into thoſe Stories which had been propagated againſt her, and to endeavour to remove the Impreſſions which her Brother had received, by giving or procuring for him every Kind of Evidence he ſhould deſire for ſatisfying him as to the Birth of the Children. D. P. 882. F.

Lady *Jane* went to *Edinburgh*, and carried the Children with her; and when there, ſhe ſaw *William Loch*, an Attorney, who had long done Buſineſs for Sir *John Stewart*; and when talking to him of the malicious Reports which had been propagated againſt her as to the Birth of her Children, he took Occaſion to aſk her when ſhe was delivered, where, and who were Witneſſes to the Birth? Upon which ſhe told him, that ſhe was delivered in *Paris* upon the 10th of *July*, by *Pierre La Marre*, a Man-Midwife, in the Houſe of Madame *Le Brun*; and that ſhe, her Daughter, a Widow Lady who lodged in the Houſe, and Mrs. *Hewit*, were preſent. Serv. 25. C.

About the ſame Time, Lady *Jane* applied for Advice to Mr. *Grant*, then Lord Advocate for *Scotland*; and after informing him of the Aſperſions that had been thrown out againſt the Birth of her Children, ſhe told him, that if he judged it neceſſary, ſhe would bring any Proof he ſhould think proper, as ſhe did not doubt of the Man-Midwife being alive who delivered her.—To which he anſwered, That ſhe need give herſelf no Uneaſineſs as to that Matter; for that as ſhe and Mr. *Stewart* acknowledged the Children, there was no further Proof neceſſary. D. P. 370. C.

Lady *Jane*, by the Advice of her Friends, went with her two Children to *Douglas* Caſtle where her Brother reſided; as the moſt likely Method of procuring an Interview with him, and of having thereby an Opportunity of either removing the Impreſſions he had got, or learning what would be moſt ſatisfactory to him.—When ſhe came to the Houſe, ſhe ſent a Meſſage by a Servant, that ſhe and her Children were there; but received for Anſwer, that they could not be admitted: And this now appears to have been owing to Advice given by *White* of *Stockbriggs*, at a private Conference held upon that Occaſion; for that the Duke was inclined to ſee them before that Conference.

Lady *Jane* paſſed that Night in the Town of *Douglas*; from whence, in her deep Affliction, ſhe wrote a Letter to her Brother that would have moved the hardeſt Heart; but there is Reaſon to believe, that *White* kept up the Letter, which was one of the Practices he commonly followed to ſupport his Government of the Duke. —— 971. B.

Lady *Jane*, finding it impracticable to make her Way to her Brother by any Avenue, returned, depreſſed and diſpirited, to *London*, to aſſiſt her Huſband, if poſſible, who ſtill remained in Goal; leaving at *Edinburgh* her two Children to the Care of her Friends.

Soon after Lady *Jane*'s Departure from *Scotland*, her youngeſt Boy died in Spring 1753. She informed her Brother of it by a Letter; and it is in Evidence, that the Loſs of the youngeſt Boy affected her ſo much as to be judged to have been the Cauſe of her Death, which happened in *November* following. Serv. 63.

As

D. P. 821. —— 900. —— 941.

As Sir *John Stewart*'s Impriſonment obliged Lady *Jane* to live ſeparate from him, Letters paſſed between them almoſt every Day; a great Number of which have been accidentally recovered ſince the Commencement of this Action. They are wrote in a Stile, which muſt convince every Reader, that they contained the true Sentiments of their Hearts, and were never meant to be looked into by the World; and they exhibit ſatisfactory Proofs of a genuine parental Affection, which none but Parents feel, and which Parents only could expreſs.

Lady *Jane* died in that State of Reſignation and Contentment which affords an agreeable Senſation to every virtuous Mind.---The only Solicitude ſhe expreſſed was for the Defender her Son, who ſhe was leaving an Infant upon the World; and in her dying Moments, ſhe, in the Preſence of many, poured forth her repeated Bleſſings upon him, as the only Fortune ſhe had to give him.

In *France*, no Perſon ever doubted of the Children being Lady *Jane*'s. In *Britain*, any Doubt, as to that Matter, was limited to a few, who were either Adherents to the Family of *Hamilton*, or who had been affected by the falſe Reports which had been propagated by the Emiſſaries of that Family: And after the Death of Lady *Jane*, Lady *Shaw*, a Friend of Lady *Jane*'s, moved with Compaſſion at ſeeing the Heir of a noble Family left deſtitute, took the Appellant into her Family, and ſupported and educated him while ſhe lived; and after her Death, he was taken under the Care and Protection of a noble Lord while he had Occaſion for it.

In 1759, Sir *George Stewart* died, and was ſucceeded in his Eſtate and Title by the Appellant's Father, Sir *John*; who, having a high Regard for the Memory of Lady *Jane*, and having a warm Affection for the Appellant as the Son of their Marriage, and having a Deſire to provide him as the Son of Lady *Jane* to the utmoſt of his Power, did immediately upon his ſucceeding to the Eſtate, grant a Bond of Proviſion to the Appellant for 50,000 Merks, which was a large Proviſion for a ſecond Son, in Proportion to the Eſtate he had ſucceeded to, taking into Conſideration the Debts he owed. And it is proved by the Writer of the Bond, that he had Difficulty in getting him reſtrained from granting it for a much greater Sum.

Serv. 24. E. P. P. 360. D.

D. P. 447.

Sir *John*, during the remaining Part of his Life, continued to act with Affection towards the Appellant as his Son; and finding himſelf dying in *June* 1764, made a ſolemn Declaration of his being his Son by Lady *Jane Douglas*.

In the preceding Part of this Caſe, an Account has been given of the Manner in which the Duke of *Douglas*'s Eyes came to be opened, and of the Deeds executed by him in Favour of the Appellant, by which he was called to the Succeſſion of the Eſtate, and put by him under the Guardianſhip of many noble and honourable Perſons; and of his having eſtabliſhed a Title to the Eſtate, under the Authority of the unanimous Verdict of a very learned and reſpectable Jury.

Thus the Defender has been eſtabliſhed in his State, as the Son of Lady *Jane Douglas*, by every Act that can poſſibly occur for aſcertaining the State of any Perſon whatever. He has the repeated Acknowledgment of Parents expreſſed in every Manner that can carry Conviction to the Mind. His Birth was never doubted of in the Country where he was born, and never queſtioned in *Britain* but by a few, which is well accounted for. The Pregnancy of his Mother, and his actual Birth, ſtand ſupported by better Evidence, than could have been well expected, or is in the Power of moſt Men to give of their Birth at ſo diſtant a Period; and to all this there may be joined, not only an Acquieſcence in his State by the Relations of his Father, who had a ſtrong Intereſt to diſpute it, if there had been Ground for diſputing it; but Duke *Hamilton* likewiſe, himſelf, at whoſe Expence this Suit is carried on, joined Iſſue with him, to try the Claim made to the Duke of *Douglas*'s Eſtate, in which he inſiſted on the Duke of *Douglas*'s firm Belief of the Defender's being the Son of Lady *Jane Douglas*, as an Argument againſt him, until an unanimous Judgment of the Court of Seſſion had been given againſt him rejecting this Claim.

PART II. BOOK II.

Of the ONUS PROBANDI.

CHAP. I.

Of the Form of the Argument as ſtated by the Purſuers.

A Queſtion was raiſed by the Purſuers, in the Courts below, in theſe Words; *Cui incumbit Onus probandi?* The ſimple and obvious Anſwer ſeems to be, *Alleganti*; and the natural Courſe of purſuing ſo general a Propoſition to any uſeful Concluſion, ſeems to lie in conſidering what are the Allegations in the Cauſe, and by whom, and for whoſe Behoof, they are made.

The Purſuers think otherwiſe, and proceed to explain their firſt Queſtion by another, not ſo general, but equally indefinite; Whether it is incumbent on the Defender to bring ſatisfactory Evidence before this Court, that he is indeed *intitled* to the Character, he aſſumes, of Son to Lady *Jane Douglas?* Or if (meaning whether) the Purſuers muſt bring demonſtrative Proof of his not being her Son?

This Queſtion alſo muſt end in nothing. The Service, without Doubt, does and will *entitle* him to the Character he aſſumes till it ſhall be reduced and avoided. This muſt be done either by ſhewing, that the Jury was miſtaken when it declared and found him in *Poſſeſſion* of the *State* he claims; or by impeaching his *Title* to that *Poſſeſſion*, by proving, in Point of Fact, that it was acquired for him by Fraud.

The Purſuers act as if they thought otherwiſe; without avowing a contrary Opinion, or even ſtating it for Argument. They ſum up, what they are pleaſed to ſuppoſe for the Purpoſe, the Topics upon which the Defender relies for turning the Burden of proving upon them; and find it eaſy, by their Way of Reaſoning, to conclude in theſe Words: "The Court is tied to no preciſe "Rules of Evidence." The Court ſeems to have adopted the Idea, and decerned accordingly.

The Form of their Argument, if they inſiſt upon calling it ſo, is this: The Verdict deſerves no Credit. None in Eſtimation of Law, becauſe the Suitor of the Writ may purchaſe it or let it alone as long as he pleaſes; becauſe the Writ goes to the Judge-Ordinary of the Juriſdiction; becauſe it commands to impannel Perſons of Character and Integrity, who are to be put upon Oath; becauſe it muſt be proclaimed publicly; becauſe nobody can be admitted to contradictory Proof who is not a Competitor by Writ, that is, who does not claim to be ſerved Heir under the preciſe ſame Titles; (the Reaſon of which ſeems to be, that otherwiſe it is mere wanton Impertinence to interfere, which no Law allows, and yet Duke *Hamilton* was admitted to contradictory Proof, and is now actually proceeding to reduce the Service, though he does not claim under the preciſe ſame Titles, but as Heir Male, and under a Male Entail, while the Defender only offers to take as Heir Female); becauſe the Jury are to find on their own Knowledge and Oath, as well as that of other Witneſſes; and becauſe the Jury, by the Law of *Scotland*, is liable to be attainted by an Inqueſt of Error for a falſe Verdict; in ſhort, becauſe the Trial by a Service-Jury is no better regulated and guarded by Sanctions in *Scotland*, than every civil Trial is in *England*, and only a little better than the Trial in criminal Cauſes, wherein a Jury cannot be attainted for a falſe Verdict: And, laſtly, becauſe they may be ſet aſide, like all other Proceedings, for Defect in Form, or for Error in Fact.

It deſerves no Credit, in Fact, becauſe in ordinary Caſes, *i. e.* where there is no Competitor, it proceeds *ex Parte:* Therefore, in an extraordinary Caſe, where a Competitor, ſuch as he is, was admitted, and kept a Buſineſs, which might have been done in two Hours, in Conteſt for two Days, it is *quaſi ex Parte*, and deſerves no Credit.

In ordinary Caſes, *i. e.* where there is no Competitor, it is ſaid to have been uſual to pay little Attention to the ſelecting a Jury; they are impannelled of the Byſtanders, or even of a Liſt given by the Party: Therefore, in an extraordinary Caſe, where there was a Competitor, one is left to preſume, beyond what even theſe Purſuers aſſert, that the Competitor was negligent, the Macers, and the learned Judge, ſpecially appointed their Aſſeſſor, partial.

Over and above theſe Objections, which go to all Verdicts alike, there are two which apply particularly to this, namely, That Part of the Evidence is forged, Part perjured. Theſe would have been more logically applied to the Queſtion *Cui incumbit Onus probandi*, if they had favoured the Court with their Opinion, upon whom, by the Law of *Scotland*, the Burden of proving ſuch

ſuch Charges as Forgery and Perjury lies; and on which Side the Preſumption is, till they are actually proved; becauſe, without ſome previous Inſtruction upon that Head, one is apt to imagine theſe to be Allegations of that Sort, where the Preſumption of Law falls in Favour of Innocence, and the Burden of proving upon the Accuſer: Nor would it ſhock one, as extremely unreaſonable, if ſuch Accuſers were bound to overcome ſuch Preſumptions by forcible Proof, at the Peril of being puniſhed themſelves as malignant Calumniators.

Having thus diſpoſed of the Verdict, as a *Circumſtance* which deſerves no Attention in the Queſtion of reducing it, they apply themſelves to what they think the only other Articles upon which the Defender can rely for turning what they call, in their general Terms, the Burden of Proof upon them, namely, the Acknowledgement of the Parents; which they deſire may for the future be called the Acknowledgement of Huſband and Wife, the baptiſmal Record, and the Habite and Repute.

Of the firſt theſe are their Words: "It is plain, from the Nature of the Thing, that in a "Queſtion *de Partu ſuppoſito* the Acknowledgement of the *pretended* Parents can have very little "Weight. The very Idea of a *Partus ſuppoſitus* involves that of the Guilt of the pretended Pa- "rents. The Charge of a Child being ſuppoſitious, *implies* that the *pretended* Parents have ac- "knowledged as their own the Child of *other People*. In the preſent Caſe the Queſtion at Iſſue is, "Whether the Defender is really Son to Lady *Jane Douglas*, or a Child fraudulently ſup- "poſed by her and Sir *John Stewart* as their own?" (This is certainly a true State of the Iſſue) *or*, in other Words, "Whether Sir *John Stewart* and Lady *Jane Douglas* have acknowledged the "Defender as their Son, when he really was not ſo?"

It is not ſeen how this "*or*" makes the Ground better. That ſhe acknowledged him is certain. That he was *the Child of other People*, or *a Child fraudulently ſuppoſed*, (as they vary the ſame Propoſition) remains to be proved.

"This being the State of the Queſtion, to maintain, that the Defender's having been acknow- "ledged by Sir *John* and Lady *Jane* as their Son is concluſive *Evidence* of his really being ſo, is "in Effect to take for granted the very Matter in Queſtion."

The two Propoſitions to be extracted from this affected Confuſion, and induſtrious Looſeneſs of Phraſe, are, 1. That the Acknowledgement of Parents is not *primâ Facie* Evidence ſufficient to turn the Burden of Proof on the other Side, becauſe it is not *concluſive* Evidence ſufficient to repel the other Side from any Proof at all.

2. That the Acknowledgement of Parents affords no Preſumption of Law, that the Fact acknowledged is true; nay, "can have very little Weight;" becauſe, if it be falſe, ſuch Acknowledgement is an heinous Crime. As if the Law of *Scotland* made no Preſumption in Favour of Innocence, but would condemn the innocent Man without Evidence of his Crime, unleſs he could prove that he had not committed it.

This Sort of Propoſition has preſſing Need of Authority to ſupport it. Reference is made to Li. 6. C. *de Teſtamentis*. "Neque Profeſſio, neque Adſeveratio nuncupantium Filios, qui non ſunt, Ve- "ritati præjudicat: &, quæ ut Filiis Teſtamento relinquuntur, juxta ea, quæ à Principibus ſtatuta ſunt, "non deberi, certi Juris eſt." This Paſſage is to be found in *Cod.* Li. 6. Tit. 23. 5. *de Teſtamentis & quemadmodum Teſtamenta ordinentur*: And the Caſe put to illuſtrate it by *Vivianus* is, "Si *Titium* "Filium tuum adſeveraſti, *nec erat*, & eum, tanquam Filium, in Teſtamento inſtituiſti; an valeat "Teſtamentum, quæritur? Reſpon. quod non, nec Hæredis Inſtitutio."

It was an odd Place to look for an Authority on the Queſtion where the Burden of Proof is to lie; and accordingly, the Conſtitution of the Emperors *Valerian* and *Gallien* goes to another Point. They take it for granted, that the Perſon ſuppoſed is the Son of *Titius*, and ordain that the Will of *Alucius* ſhall not diſappoint the real Children, by calling the Son of *Titius*, his own Son.

The ſecond Authority comes from an apter Place, and conſequently makes more againſt the Purſuers. *Cod.* Li. 4. Tit. 19. §. 14. *de Probationibus*. "Non nudis Adſeverationibus, nec ementitâ "Profeſſione, ſed Matrimonio legitimo concepti, vel Adoptione ſolenni, Filii Civili Jure Patri con- "ſtituuntur. Si itaque hunc, contra quem ſupplicas, alienum eſſe probare confidis, per te, vel per "Procuratorem, Adfirmationem ejus falſam *detege*; [the Note upon which, by *Contius*, is *detege*] "cum ille quaſi poſſideat; & Quæſtio eſt, utrum Filius ſit iſtius, aut alienus."

The third Authority is *Bellius*: "Ubi agitur *principaliter* de Filiatione non operatur Tractatus." This is cited, as it was in Fact, an Obſervation upon the Caſe of *Ruſca*, where Fraud was proved, by direct Evidence, upon the *Tractatus*.

The laſt Authority is from *Maſcardus*, *Concl.* 791. N° 2. "Filiatio itaque quandoque probatur per "Nominationem Parentum; verum, quoniam, *ut plurimum*, per Nominationem ſolam non probatur, "ideirco nos negantem conſtituimus Concluſionem, dicemuſque Filiationem ex ſolâ Nominatione

"non

" non probari." The Words *ut plurimum* are left out of the Quotation, and the Context of the Argument, which will be cited hereafter on the other Side. In the mean Time it is to be obſerved, that this Paſſage has no Relation to the general Queſtion, upon whom the Burden of Proof lies: So far from it, that the ſame Author, upon the whole Matter, determines that this ſingle Circumſtance, *Nominatio Parentum*, turns the Burden of Proof upon the adverſe Party. Much leſs does it apply, in the particular Caſe, to the Ground upon which the Defender offers to turn the Burden of Proof on the Purſuers, as will be ſhewn preſently.

This Argument upon the general Propoſition is aſſiſted by an Obſervation that the Defender diſavows Belief in one of his Parents; *ſcilicet*, He thinks Sir *John* has confounded Circumſtances in his Account of *La Marre*. What has that to do with his Acknowledgement of the Defender for his Son?

Of the baptiſmal Record they ſay, it is of no Avail, for the ſame Reaſon as the Nomination of the Parents is uſeleſs. " To attempt an Impoſture of this Nature, without taking Care that the Child " ſhould be baptized as theirs, would indeed be ridiculous; but it would be no leſs ridiculous, if an " Artifice or Fraud of this Kind, which is of the *Eſſence of the Crime*, ſhould, by the Conſtitution " of any Country, ſerve to *protect the Crime from Challenge*."

This lively Paralogiſm offers to infer, that, becauſe the Matter alledged is a *Crime*, the *Accuſer* is *not* bound to prove it; and becauſe the general Preſumption of Law in Favour of Innocence does not *repel* a contrary Proof, it does not *require* ſuch Proof to ſubvert it.

The Authority upon which this new Propoſition is attempted, is taken from the *Code*, Lib. 7. Tit. 16. § 15. *de Liberali Cauſâ*, where the Emperors *Diocletianus* and *Maximinianus* have provided in Favour of Liberty, that the Imperfection or Falſehood of the *Tabulæ Cenſuales* ſhould not *conclude* the Claim of Freedom, but Proof by Witneſſes ſhould be allowed againſt them. If only the ſame Preſumption is allowed to the baptiſmal Record in Favour of Poſſeſſion, as is allowed by this Conſtitution to the *Tabulæ Cenſuales* againſt Liberty, it deſtroys their Argument.

The Words of the Conſtitution are, " Nec omiſſa Profeſſio Probationem Generis excludit, nec " falſa Simulatio Veritatem minuit: Cum itaque ad Examinationem Veri, omnis Jure prodita debeat " admitti Probatio; Aditus Præſes Provinciæ, ſolennibus Ordinatis, prout Juris Ratio patitur, " Cauſam liberalem inter vos decidi providebit."

The Caſe put upon this by *Vivianus*, is *Gothofred*'s Explanation, and runs thus: " Si de Poſſeſ- " ſione Servitutis in Libertatem provocâſti, non ob hoc tibi præjudicabitur, quod Inſtrumenta Nati- " vitatis tuæ non habueris, quo minus Lis ſuo Marte decurrat, &, prout Juris Ratio dictat, decida- " tur, aliis idoneis Probationibus adhibitis."

For the reſt they refer to a Number of Caſes printed in their Appendix, which will carry Confutation of this extraordinary Argument to any Body who will be at the Trouble to read them, without requiring other Comment.

Of *Habite and Repute*, it is argued in theſe Words: " As the Habite and Repute in this Caſe " takes its Riſe merely from the Aſſertions of the ſuppoſed Parents; ſo it is, at beſt, but Hearſay " Evidence, at ſecond Hand, of their Acknowledgements; and if the Acknowledgement itſelf be " not ſufficient Evidence, which has been already ſhewn to be the Caſe, the Habite and Repute " proceeding upon it can deſerve no Regard."

It would be tireſome Repetition to go over the ſame Ground a third Time. If the Purſuers have really convinced any Body, that perpetual Treatment, expreſs Acknowledgement, and ſolemn Recognition of a Child by Parents (though criminal if falſe), afford no Preſumption of Law in Favour of its Birth, let him go away with this further Perſuaſion, that popular Belief adds nothing to that Preſumption. It is below even the Serioufneſs of common Senſe to argue ſuch Propoſitions.

But the Purſuers ſtill hang upon this Idea, and ſay, that the popular Belief was not univerſal. *Caranza*, *Tit. de Partu ſuppoſito*, S. §. 2. n. 79. gives them their Anſwer: " Facilè eſſet " cuicunque maledico Famam notare cujuſvis honeſtiſſimæ Matronæ, et in Vulgus ſpargere con- " fictam Subpoſitionem, eamque Aſſertionibus Fide dignorum et ad credendum facilium com- " probare." For this Part of their Argument, they reſort to the ſhameful Conduct of one of the Tutors of Duke *Hamilton*; and becauſe he invented and propagated Falſhoods (now detected) of Lady *Jane*, they dare to call the popular Belief leſs than univerſal: which if they could prove, no Argument would ariſe upon it, as ſhall be demonſtrated immediately.

Having thus ſet aſide all which they think the Defender relies upon for turning the Proof upon them, they proceed to ſhew, why they have been ſo induſtrious in agitating the previous Point, by ſtating what Proof they have to produce, namely, *Circumſtances* and *Preſumptions*.

This is taking a very wide Field indeed. There may be Circumſtances of ſuch ſtriking and direct Inference, that it would be as hard to avoid that, as to repel any more immediate Teſtimony: If one comes upon a lone Houſe, and ſees a human Body weltering in its Blood, and another Man, the only one near, coming from it with Knife and Hands bloody, and the horrid diſtracted Countenance of a Murderer, that would be a pregnant Circumſtance to be received againſt the Murderer. But what has this to do with the Burden of Proof? Is the Culprit bound to prove a Caſe ſo alledged againſt himſelf?

What Need is there for the Sake of ſuch a Propoſition to cite *Maſcardus*, *Farinacius*, or any other Doctor? What Need to cite their general Propoſitions, without adding their Ampliations or Limitations upon it (the Form of their Concluſion)? the firſt of which are an Analyſis of *Boſſius*, the ſecond Corrections of him, the firſt ſtating a Caſe ſtrong as that put before of Murder; the ſecond explaining, how the particular Circumſtances may be avoided in Proof.

Maſcardus Concl. 1147. ſays, " Receptiſſima eſt in Jure noſtro illa Propoſitio in his quæ diffi-
" cilia ſunt probatu, leviores Probationes ut ſunt Conjecturæ et Præſumptiones *admitti* debere---ita
" generatim locutus *Bartolus*." And yet that ſame Doctor, *Bartolus*, laid it down, " Genera-
" tim (l. Filium definimus nu. 2. verſ. quærunt Doct. ff. de his qui ſunt ſui, vel alieni Juris) Patris,
" vel Matris Aſſertioni non eſt eſſe credendum, ſi deponat talem non eſſe Filium ſuum; quia Patris
" vel Matris Aſſertio prodeſſe poteſt, et non obeſſe Filiis."

Farinacius is alſo cited, Part 6. Quæſt. 150. Par. 10. nu. 245. " Cum Partus ſuppoſitus ſit
" difficilis Probationis, ideo probatur Preſumptionibus et Conjecturis;" without alluding to one of twenty-one Ampliations, which explain the Extent of this Propoſition; without adding one of five Limitations, which reſtrain the Generality of it. The Propoſition is ſtated ſubject to this Queſtion, " An ſufficient Conjecturæ Hominis, an vero debeant eſſe approbatæ Lege." The general Limitation is, " Ut Crimen ſuppoſiti Partus non præſumatur, ſicuti non præſumitur falſum." This is alſo confirmed by *Menochius de Præſumpt.* lib. 4. præſ. 24. n. 1. Another Limitation is, " Suppoſiti Partus Pœnam omnino ceſſare, quando probaretur vera Pregnantia Mulieris."

A Conſtitution of *Conſtantine* is alſo cited from the Code, l. 9. tit. 22. " Ad Legem *Cornelian.*
" de falſis." He recommends to a Judge his Deportment both in hearing and puniſhing, without Reference to the Burden of Proof where it ſhall fall. The firſt Part without the ſecond is relied upon by the Purſuers: " Ubi falſi Crimen inciderit, tunc acerrima fiat Indago Argumentis, Teſti-
" bus, Scripturarum Collatione, aliiſque Veſtigiis Veritatis; nec Accuſatori tantum Quæſtio incum-
" bat, nec Probationis ei tota Neceſſitas indicatur." Upon the Word *Accuſatori*, this is the Note of *Contius*, " Qui falſam probat; ei tamen prius." Upon the Word *indicatur*, " Accurſius; ſecus
" in Civili Cauſa."

After this Waſte of Argument and Miſapplication of Authority, the Concluſion runs thus:
" The Reſult of all that has been ſaid on this Subject is, that in judging of this Cauſe your Lord-
" ſhips are not tied down to any particular Species of Preſumption or Proof, but that your Duty is,
" after weighing maturely the whole Circumſtances of the Caſe taken together, to return your
" Verdict as the great Jury of this Country, according as theſe Circumſtances ſhall ſeem to pre-
" ponderate the one Way or the other."

How was the Great Jury of this Country to collect, from ſuch a Concluſion, on which Side the Burden of Proof lay, or which Party muſt fail for the Want of it? The Premiſſes offered to prove, 1. That Poſſeſſion muſt be evicted without Evidence, unleſs it could prove by what Means it was acquired; which is to ſay, the Death of the Midwife extinguiſhes the Poſſeſſion of State to the Child. In the ſecond Place, the Parents, it ſeems, are no Witneſſes, as being accuſed of the Crime, though no Proof is brought to ſuſtain the Charge; and as there happen to be Witneſſes for the Defender, they are preſumed to be Accomplices in the Impoſture, becauſe they have ſworn to the Reality of the Birth. A Syſtem of Argument, by which the Great Jury of this Country may find the whole People of the Country to have had no Parents at all. They have been long in Poſſeſſion of their State; but that is the *Corpus Delicti*, the very Impoſture to be complained of, unleſs it can be ſhewn how they came by it. Their Parents have worn out their Lives, and beſtowed their Fortunes in fulfilling the Duty of that Relation; thoſe are the very Inſtances by which they are made Parties to the Impoſture, unleſs they can prove the Act of Birth, by which the Relation began. If it ſhould happen, that ſome Perſons ſtill living had ſeen the Birth, and ſworn to it; that very Atteſtation makes them Accomplices in the Crime, unleſs they can prove it by other Witneſſes; and ſo on. Theſe are the Abſurdities which the Premiſſes infer, and the Argument avoids, only by drawing no Concluſion at all.

CHAP. II.

Of the Diviſion of the Queſtion.

IT has been laid down, that to *prove* belongs to the Party which *alleges*; and it is thought, that this ſimple Rule, directly applied to the Occaſion as it ariſes, will determine upon each, where lies the Burden of Proof.

The Eſtate of *Douglas* fell, by the Death of the late Duke, into the Hands of the King; liable, however, to be ſued out by the lawful Heir. Mr. *Douglas* tendered himſelf as that Heir. He ſtood *in Petitorio*, a Stranger to the Eſtate of *Douglas*, but in actual Poſſeſſion of the State of Filiation to Lady *Jane*. It behoved him, therefore, to make known to the Law, the State he was in the actual Poſſeſſion of; and upon that Foundation to claim the Privity of Heir to the Eſtate of *Douglas*. Mr. *Douglas* accordingly began by alleging his Poſſeſſion of State, *viz.* Son to Lady *Jane Douglas*. The Jury recognized his State of Filiation to Lady *Jane*, Lady *Jane*'s to Marquis *James*, the late Duke's to the ſame Anceſtor, and through that Medium, found, upon Oath, his Privity, as neareſt lawful Heir to the Duke; and upon the Faith of that ſolemn Adjudication, the King, his Superior, inveſted him with the actual Poſſeſſion of that Eſtate, to which he had thus eſtabliſhed himſelf Heir. A remoter Relation, who in Virtue of the State whereof he is in Poſſeſſion, might claim to be Heir if Mr. *Douglas* were extinct, offers to reduce the whole Proceeding. This he may do, either by *denying* that Mr. *Douglas* was in Poſſeſſion of the State of Filiation to Lady *Jane*, or by *affirming* that ſuch State was acquired by Fraud. He might alſo, as was done by Duke *Hamilton*, admit the Premiſſes, the State of Filiation, *&c.* and deny the Concluſion, that he was therefore in the Relation of Heir to the Deceaſed; but that Queſtion is now otherwiſe diſpoſed of.

With regard to both, but particularly the firſt, the Purſuers have to combat with a ſolemn Sentence between adverſe Parties, actually ſtanding in Judgment, actually litigating, which alone is a cogent Preſumption in the Favour of Mr. *Douglas*.

In order to keep Poſſeſſion of his Judgment, the firſt Queſtion which occurs is, By what Tokens a Poſſeſſion of State may be proved? This will aſcertain whether the Jury have done right in affirming it to him. The ſecond Queſtion is, How far ſuch Poſſeſſion ſo affirmed, ſhall avail him till it be evicted?

It ſeems uſeful, in diſcuſſing the firſt Queſtion, to ſeparate the *Fact* of Poſſeſſion of State from the *Evidence* of it, and define the *firſt* by itſelf. From which Definition, it will appear what Sort of Evidence is apt to eſtabliſh it; a Diſtinction obſerved by the *Engliſh* Law in the Caſe of Special Verdicts, where *Facts* muſt be found, and not *Evidence*.

Poſſeſſion is that *Relation* which a moral Agent has to a Subject capable of actual Occupation; implying the *Purpoſe*, as well as the *Act*; when one poſſeſſes, not as Keeper, Adminiſtrator, Borrower, *&c.* but affecting pure Dominion in the Subject, excluſive of others. *Poſſeſſion* is alſo conſidered either as *natural* or *civil*. *Natural Poſſeſſion*, according to *Puffendorf*, is ſimply thus: When one having occupied a Thing, adheres to it, not only by mental Inclination, but by corporal Application. A neceſſary Part of this Propoſition is Something corporeal, ſomething capable of ſuch Application. *Civil Poſſeſſion* ſeems to differ chiefly in its Extent, and in the Variety of Subjects it applies to; for by civil Conſtitutions, Rights, which do not exiſt in Nature, that is, incorporeal Things, which exiſt only in Eſtimation of Law, are the Subjects of Poſſeſſion, and intitled to the Favour and Preſumption which is eſſentially neceſſary to the Adminiſtration of Civil Juſtice.

Civil Poſſeſſion therefore, though it always carries along with it the ſame Conſequences, and is always the ſame in Subſtance and Effect, varies in its Form, according to the Subjects whereto it is applied. The Fact of civil Poſſeſſion obtains upon corporeal Things, when they are occupied by one affecting Dominion over them, or by others acting under him. The Fact of civil Poſſeſſion obtains upon incorporeal Things, when the Profits, or other Incidents, to ſuch Rights are perceived, and uſed by Perſons pretending Title to them. Thus, in Eſtimation of Law, one is in Poſſeſſion of a Rent, not only in the Moment of receiving the Payment, but during all the intermediate Time; of an Advowſon, not only in the Moment of preſenting, but during the Plenarty; and ſo of other ſuch incorporeal Subjects of Poſſeſſion. Of Offices one is in Poſſeſſion by the Exerciſe of them, at whatever Periods they may occur to be uſed. Of Dignities and Pre-eminencies one is in Poſſeſſion by aſſuming the Stile, and receiving the marked Reſpect, which by the civil Conſtitutions is due to them.

The Subject now under Conſideration is, the State of a Man in civil Society; conſiſting of Families; and thoſe conſiſting of Individuals. The State of a Man in civil Society, is determined in the firſt Inſtance, by his domeſtic Relation to the Family he is of, and by the Place that Family holds in the Order of civil Society.

1. The Place which one has in a Family, creates a domeſtick Relation, out of which ſprings a Variety of reciprocal Duties, the Exerciſe of which (either paying or receiving them) is the Poſſeſſion of his domeſtick State. For inſtance, from a Parent, by the Laws of God and Man, there are due Protection, Nurture, Education, and numberleſs other Offices of parental Affection, which is as much a Duty as a natural Inclination. Receiving theſe, is the Act of poſſeſſing the State of Filiation. The Child owes to its Parents, Submiſſion, active Obedience, and reciprocal Support; which paid in the various Particulars it conſiſts of, is actually exerciſing the *Office* of Child, if one may be allowed the Expreſſion.

The Reports which are made by thoſe within whoſe Notice theſe Facts fall, are the Evidence of them, and of the Poſſeſſion of State which conſiſts therein.

2. It occurs of Courſe to give Names to ſuch Relations; and the Appellations of Father and Child, become the oſtenſible Signs of the Poſſeſſion which the Child holds of his State.

Therefore the Reports which are made of this Kind of Intercourſe, are Part of the Evidence of Poſſeſſion of State.

3. In a more extended View of Society, the Place which a Child holds in his Father's Family, intitles him to a Portion of that Attention and Reſpect which the Family is entitled to from the Place it holds in the Order of Society: Whenever he receives that, he is alſo in the Act of poſſeſſing his State of Filiation.

Herein, properly ſpeaking, ſeems to conſiſt the being *habite* the Son of ſuch a Family; and the Converſation which paſſes in the World concerning him, in Reference to all the foregoing Articles ſeems to be, what is called, his Habite and Repute of Filiation.

4. Throughout the Chriſtian World it is an Article of Religion, to initiate the Child ſolemnly into Chriſtianity by Baptiſm, which, by the Rules of civil Society, is reduced into an Act, or Inſtrument, more or leſs ſolemn. Here then is a more ſolemn Profeſſion of the Parents, that the Perſon in Queſtion is their Child.

This being the Nature of poſſeſſing the State, the only Queſtion among the Doctors of the Civil Law ſeems to be, not whether ſuch Poſſeſſion proves the State, but what is ſufficient Evidence of the Poſſeſſion.

CHAP. III.

Of the Evidence requiſite to prove Poſſeſſion of State.

THE Mode of poſſeſſing the State of Filiation firſt mentioned, is the moſt oſtenſible, marked, and conſiderable of any. *Maſcardus* has collected the Opinions of the Doctors on this Head, *Concl* 789: "Alia ſolet probandæ Filiationis Conjectura ſumi à Tractatu, qui conſuevit oriri à Parentibus et ab iiſdem queis ut Filius tractatur. *Bartolus* magiſtraliter docuit, Si quis tractaverit alium ut Filium ſuum, etiamſi nulla Verba intervenerent, conſtituit eum in quaſi Poſſeſſione Filiationis donec contrarium probatur; adeo ut ei ſufficiat facere Articulum, et probare quod ille tractaverit eum ut Filium.---Si Mater et Maritus, etiam cum Juramento, negarent eſſe Filium ſuum, nihilominus præſumeretur Filius, firmo manente illo Tractatu. Hoc eo uſque eſt verum, ut transferat Onus probandi in Adverſarium; ut Conſulti Plures reſponderunt."—So *Covarruvias*, Part. 2. c. 8. §. 3. n 6. "Probatur Filiatio ex Tractatu, quia à Parentibus quis ut Filius tractabatur, etiamſi Parentes hoc poſt modum negaverint.; ſi Filius Reus ſit, eò quòd tanquam Filius à Parentibus tractabatur, defendendus eſt, donec Actor eum Filium tractantis non eſſe probârit."

This is not intended of equivocal Acts of Treatment, but, "Si Actus Tractationis conveniens ſit ſibi, Filio non etiam extraneo nec procedat, ubi tractans ſæpè dixit, quòd, quicquid faciebat, id faciebat Amore Dei, vel alio Animo quàm ad Effectum Filiationis, eo enim Caſu Tractatus non conſtituitur in quaſi Poſſeſſione Filiationis." But it ſhould ſeem, that wherever the Treatment is uniform, conſtant, and conſiſtent with the Idea of Filiation, it proves the Poſſeſſion of State.

The Nomination of the Parents is not reckoned ſo high, in the Scale of Evidence, as the Treatment, for this plain Reaſon, becauſe it is more liable to be equivocal. The Evidence of uniform Treatment cannot deceive, but by the Means either of Perjury in thoſe who report, or of Fraud in the Parents, the Authors of it; neither of which is to be preſumed.

Maſcardus lays it down generally as the Purſuers have cited it: "Filiatio quandoque probatur per Nominationem Parentum; verùm quoniam, ut plurimùm, per Nominationem ſolam non probatur, id circò nos negantem conſtitutimus Concluſionem, dicemuſque Filiationem ex

ſolâ

" ſolâ Nominatione non probari." The Reaſon (he adds) given for this by ſome Doctors is, " Quia " Filiatio à Naturâ deſcendit, quam ſola Nominatio efficere non poteſt; ſed tantorum Virorum Pace " dixerim; hæc Ratio nullo Pacto mihi probatur; nam ſi illa Ratio vera eſſet, utique nullius eſſet " Ponderis atque Roboris ipſa Filiationis Confeſſio, ſive in Judicio, ſive extra Judicium; quod " quàm Veritati repugnat ex iis facilè, quæ à Nobis in medium deducta ſuere, unicuique patere " poteſt; et licet Filiatio à Naturâ trahat Originem, iſtud tamen Principium vel Origo cum non " poſſit verè et plenè probari, ſumitur ex Indiciis et Præſumptionibus." For this he cites *Æmilius* and *Baldus:* " Probabiliorem itaque putaverim eſſe Rationem, quia ſola Nominatio facta de " aliquo uti Filio communiter, ſit blandiendi Cauſa, non autem judicandi et probandi talem " Filium, neque enim dulciore Vocabulo poſſumus aliquem nominare quam ſub Nomine Filii." But his firſt Limitation is, " Ut Concluſio principalis vera non ſit, quin ſaltem ex tali Nomi " natione Onus probandi contrarium transferatur in Adverſarium." For which he cites *Baldus*, *Decius*, and many other Doctors.

He alſo limits his Concluſion in Inſtances where the Act of Nomination is, that " qui magis " Filio quam extraneo conveniret, ut ſi nominaret illum Filium inſtituendo Hæredem ſuum, et " præſtaret illi Alimenta vel in Actu Emancipationis ac Exhæredationis et aliis id Genus, " nam hoc Caſu talis Nominatio probaret Filiationem." For which he cites *Bartolus*, and a great Variety of other Writers.

He alſo limits his firſt Concluſion: " Quando Pater et Filius invicem pro Patre et Filio nomina- " bantur, quia tunc ex hujuſmodi reciprocâ Nominatione probatur Filiatio." Here alſo he cites *Bartolus*, and others: Among the reſt *Paris.* in Conſ. 10. nu. 51. Vol. 2. " Ubi inquit, quòd " conſtituitur Filius in quaſi Poſſeſſione Filiationis."

The Reſult is, that if the Nomination be a genuine Act intended to expreſs the Relation of Father and Son, and not applicable to any other Purpoſe, it proves, in Point of Fact, the Poſſeſſion of State; and this for the Reaſon yielded before, Becauſe it would be preſuming the Act to be criminal, if it were otherwiſe interpreted.

This ſeems to be the Principle upon which ſuch peculiar Faith is given to Acts of Baptiſm, becauſe they are ſolemn deliberate Acts, and by no poſſible Interpretation equivocal.

Habite and *Repute* is another Head of Proof of Filiation, which has been always deemed ſufficient *primâ Facie* to prove Poſſeſſion of State; and through that Medium, Filiation. It is obſervable, that Practice has introduced a Sort of Formulary of Depoſition in *Scotland*, that ſuch an one was *Habite* and *Repute* the Child of ſuch one; and this Practice is alſo founded upon the greateſt Authority of the Civilians.

Maſcardus writes: " Altera ſolet adduci Conjectura ad probandum Filiationem, quæ eſt per " Famam et communem Opinionem Populi, ex quâ Filius conſtituitur in quaſi Poſſeſſione Filiatio- " nis." For which he cites a great Multitude of Authorities.

The Reaſon given for this by *Baldus* is, " Quia Fama verſatur circa Res veras aut Veritati proxi- " mas." By *Menochius*, " Quia hæc eſt Materia difficilis Probationis; et ideo per Conjecturas " Probatio fumi poteſt."

Maſcardus adds, " Hæc eadem Concluſio tibi ampliandа eſt, ut procedat, etiamſi ſola Fama ſive " communis Opinio adſit, *Titium* ſcilicet eſſe *Caii* Filium, etiamſi abſit Tractatus & Nominatio. " Nam illa Fama conſtituit eum in quaſi Poſſeſſione Filiationis, et transferat Onus probandi in " Adverſarium." For this alſo he ſubjoins many Authorities.

Maſcardus ſtates, that other Lawyers have thought otherwiſe of this Propoſition: " Sed hæ " ſcribentium Lites facilè tolli poterunt, ſi dicemus priorem Sententiam tunc demùm procedere, " quando cum Famâ concurrerent alia Adminicula; poſteriorem autem quando eſſet ſola Fama, " nam tunc verum eſt non *probare.*"

What he means by *probare* is explained by his Limitation upon this Poſition: " Ut cò uſque " non procedat, quin ſaltem transferat Onus probandi contrarium in Adverſarium."

He alſo thinks Fame alone full Proof: " Si eſſemus in antiquo, illaque eſſet inveterata in Me- " moriâ Hominum, quin tunc probaretur Filiatio."

Abſtractedly from the Opinion of all Doctors, common Senſe ſeems to ſpeak, and Analogy to our Experience of proving Poſſeſſion in other Articles confirms, that any one clear, pertinent, unequivocal Act of Poſſeſſion proved, in one of the abovementioned Inſtances, wherein Poſſeſſion obtains and conſiſts, muſt eſtabliſh the Fact of Poſſeſſion of State, as it would the Fact of any other Poſſeſſion.

Bartolus, L. 1. §. " Idem per contrarium ff. de agnoſcendis Liberis & in l. non nudis C. de " Probatione & in l. Filium ff. de his qui ſunt ſui, inſtruit Advocatos in probandâ Filiatione, ex

" quo tria ſunt à Teſtibus inquirenda: Primùm, An ſciant *Sempronium* eſſe filium *Titii* ex Matri-
" monio legitimo ab ejus Uxore conceptum? Secundum, Sciatne *Titium*, dictum *Sempronium* eſſe
" Filium ejus, agnoviſſe, atque ut talem eum tractâſſe, eundemque *Sempronium* in Poſſeſſione Fi-
" liationis, penes dictum *Titium*, extitiſſe? Tertium, An creditum atque exiſtimatum fuerit com-
" muni Viciniæ Fama præfatum *Sempronium* Filium eſſe legitimum dicti *Titii?* Verùm hæc
" omnia à Teſtibus interrogantur, non quòd omnia probari ſit neceſſariùm quòd ex Premiſſis con-
" ſtat, ſed ut Teſtis qui unum ex his ignorat alterum fortaſſe aſſerat."

It would be endleſs to tranſcribe all the Authorities to this Purpoſe, and uſeleſs in the preſent Caſe; where, from the Moment Mr. *Douglas* has been known in the World, all, who have ſeen him in Family, have deſcribed every Act, whereby one could poſſeſs and enjoy the State of Filiation: Conſtant Treatment by both his Parents, with Offices of uncommon Affection: Lady *Jane* in particular, with whom he lived moſt, behaved to him with a Tenderneſs which could not be diſſembled: His Nurture and Education was extorted, by their Affection and Duty, out of their Penury and Wretchedneſs: Their Acknowledgements were ſolemn, and repeated, by his Baptiſm, by Death-bed Declarations, and by giving him all they had to give by ſolemn Inſtruments. He was given out alſo and received by the Circle of their Friends as their Son. Therefore, without attending to ſubtle Scruples about this or that Head or Article of Evidence, it is enough if the Doctors will allow, that Poſſeſſion of the State of Filiation is a Fact capable of Proof; and no Doctor has been found to bring that into Queſtion.

CHAP. IV.

Of the Effect of proving the Fact of Poſſeſſion of State.

THAT Poſſeſſion, wherever it obtains, is, *primâ Facie*, a Proof of Dominion in the Subject ſo poſſeſſed, is a Propoſition not now to be drawn into Queſtion: And that this Rule obtains by Analogy in the Caſe of Filiation is proved, not only by the good Senſe of the Propoſition, but alſo by Authority and common Experience.

Maſcardus Concluſ. 797. *Quo Pacto Articuli ſunt concipiendi ſuper Probatione Filiationis*, cites *Bartolus* in the Place mentioned before, " qui docuit Advocatos, duos debere formari Articulos
" ad probandam Filiationem; unum, ſcilicet de *Proprietate* Filiationis, in quo dicatur talem,
" nempe *Caium* eſſe Filium *Titii*; alterum verò de communi Opinione Filiationis, in quo pona-
" tur, quod talis fuerit in quaſi Poſſeſſione Filiationis, et pro Filio talis habebatur et indicaba-
" tur." *Bartolus* is followed by *Alexander* Conſ. 51. *Viſo et Diſcuſſu Proceſſu*, who thought, " ſatis eſſe ſi unus tantum probatur Articulus, hoc eſt, quaſi Poſſeſſio Filiationis; eò quod hu-
" juſmodi quaſi Poſſeſſio transferat Onus probandi in Adverſarium;" and many other Authorities are cited to the ſame Effect. Other Doctors thought three Articles neceſſary: The third, " Quòd Vulgi Opinione putabatur pro Filio." *Maſcardus* thinks one ſufficient; and obſerves, that thoſe who demand them, " Non intelligere ibi poſita copulativè debere probari, ſed ad Cau-
" tionem illa tradunt; ut, ſcilicet, ſi unus Articulus non probetur, ſatis ſit quod alius probatur."

And *Maſcardus Concl.* 787. n. 11. lays it down as the Opinion of all the Doctors, " Cum
" igitur adeo difficilis ſit Filiationis Probatio, conveniunt omnes D. D. ſufficere Probationem
" per Præſumptiones et Conjecturas."

And if the Law were otherwiſe, what endleſs Diſorder would ruſh in upon Society, what frequent Calamities would fall upon Individuals? Men bring their Children Home oftentimes from Situations not eaſily traced by living Evidence; but they are treated as Children, nouriſhed, educated, and advanced as ſuch; they die, and the Law deſpoils the Children, they have cheriſhed with a warmer Affection than Self-love, of their Succeſſion, and their very Name, becauſe the Deſerts of *Aſia* or *America*, from whence they have earned their Fortune, ſends no Witneſſes to prove the Fact of Delivery. Nor are ſuch the only ſuppoſable Caſes of Hardſhip: At home the Lapſe of Time will certainly deſtroy the Evidence:---Accident may do the ſame in a very ſhort Period, eſpecially in the Caſe of little People, who frequently have neither Servants nor Midwife.

The Principles of the Law on this Head are ſo brightly illuſtrated by *Cochin*, a famous *French* Lawyer, that it may be worth while to tranſcribe the Paſſages.

" C'eſt ſur ces deux genres de preuves qui porte l'état des hommes; celle de la poſſeſſion pub-
" lique eſt la plus ancienne, et la moins ſujet à l'erreur, celle des régiſtres publics eſt la plus nouvelle
" et la plus authentique. Quand elles ſe prétent un ſecours mutuel tous les doutes diſparoiſſent;
" quand elles ne ſont pas unies les queſtions peuvent dépendre de la vérité des eſpéces et des cir-
" conſtances.

" Ou l'on eſt attaqué dans un état dont on eſt en poſſeſſion, ou l'on réclame un état dont on
" n'a jamais joui. Dans le prémier cas la poſſeſſion ſuffit à celui qui eſt attaqué, il n'a pas beſoin
" de

" de récourir aux monuments publics, ni à aucune autre genre de preuves ; il poſſede, et à ce " ſeul titre on ne peut pas héſiter à le maintenir.

" Dans le ſecond cas, celui qui réclame un état, dont il n'a jamais joui, trouvant le même ob- " ſtacle de la poſſeſſion, ne peut reüſſir dans ſon enterprize, s'il n'a en ſa faveur des titres ſolennels, " qui prouvent que la paſſion et l'injuſtice l'ont dépouillé.

" Ainſi la poſſeſſion publique, qui décidoit ſeul avant l'établiſſement des régiſtres publics, con- " ſerve toujours ſon prémier empire ; c'eſt elle qui forme toujours la preuve la plus éclatante, et la " plus déciſive, et ſi elle peut être combattuë par des preuves contraires, ce n'eſt qu'autant que ces " preuves poſent d'abord ſur un fondement ſolide adopté par la loi, c'eſt à dire, ſur les titres les " plus authentiques et les plus reſpectables."

In another Place the ſame Author ſays,—" Elle eſt infiniment dangéreux ſi on l'admet en fa- " veur de ceux qui n'ont ni titres ni poſſeſſion.—L'état des hommes, ce bien précieux, qui fait, " pour ainſi dire, une portion de nous mêmes, et auquel nous ſommes attaché par des liens ſi ſa- " crés, n'aura plus rien de certain ; on le verra tous les jours exposé aux plus étranges révolutions. " —L'homme qui jouit d'un nom illuſtre et d'un rang diſtingué ſera renverſé et précipité, pour " ainſi dire, dans le néant, parcequ'on entreprendra de lui prouver par témoins, qu'il n'eſt point " né des pere et mere, qui lui ont été donnés dans ſon acte de baptême, et qui l'ont élévé publi- " quement comme leur enfant---on ſuppoſera des faits, auxquels on donnera un extérieure de " vraiſemblance.---une grand maiſon, dira-t-on, étoit prête à s'éteindre, on a eû récours à la fic- " tion pour la perpétuer, on a pris un enfant étranger, et on lui a procuré les titres, et la poſſeſſion " propre à l'introduire dans le ſein de cette famille ; mais il faut que la vérité triomphe, et la " preuve teſtimoniale ſeul peut la dévéloper---C'eſt ainſi que dans l'état le plus tranquille on verra " ſon nom, ſa fortune, ſon rang, compromis, et livrés aux dangers d'une preuve plus ſouvent " dévouée à la corruption, et au menſonge qu'à la vérité.- -D'un autre coté, un enfant " de ténébres qui ne trouve dans ſon ſort que dégout et que miſéres, entreprendra tout pour " en ſortir ; plus ſa deſtiné ſera obſcure et inconnuë au public, & plus il lui ſera facile de ſe " donner un nom et un rang diſtingué, s'il lui eſt permis d'y aſpirer avec le ſécours de quelque " témoins diſpoſés à ſoutenir ſon impoſture—ainſi la ſociété civile ne ſera plus qu'un chaos dans " léquel on ne pourra plus ſe diſtinguer et ſe réconnoître à des caractéres certains, on changera " d'état comme de mode, et les conditions, diſtribués par la providence, au milieu des tem- " pêtes dont elles ſeront agitées, éprouveront des viciſſitudes qui ſeroient l'opprobre de la " nature.

" Qu'on ne diſe pas, que ces ſont-là des inconvéniens & de vaines terreurs qui ne doivent pas " prévaloir ſur la vérité ; ſans doute, que ſi la vérité pouvoit briller à nos yeux avec cet éclat dont " l'évidence eſt accompagnée, il faudroit l'embraſſer avec joie & la ſoutenir avec courage.—Mais " il ne faut pas ſe flatter de la trouver jamais dans les queſtions d'état, à ce degré d'évidence, &, " pour ainſi dire d'infallibilité, qui pourroit remplir tous nos vœux.---La conception, la naiſſance, " peuvent être envelopées de mille nuages, les paſſions peuvent y joüer leur rolle & ſubſtituer des " couleurs à la réalité, l'illuſion peut y trouver ſa place ; mais ſi c'eſt un malheur attaché à la con- " dition humaine, il faut dans l'incertitude néceſſaire où elle eſt plongé, ſe fixer à des regles cer- " taines qui conduiſſent le plus ordinairement à la vérité,qui du moins entretiennent l'ordre & la paix, " avantage plus précieux pour la ſociété en general, que la récherche d'une vérité obſcure ne peut l'être " pour l'intêret de quelques particuliers.---Or, les regles qui peuvent ſeules nous ſervir de bouſſole " dans cette mer orageuſe c'eſt la poſſeſſion publique, principalement quand elle eſt fortifié par " l'autorité des régîtres et des monuments les plus authentiques : abandonner la route qu'elle " nous trace, pour s'engager dans celle da la preuve teſtimoniale, c'eſt ſe livrer à des écueils, dans " leſquelles la vérité court un riſque évident de faire nauſrage.—Il eſt donc de la ſageſſe des ma- " giſtrats, il eſt de l'intereſt eſſentiel de la ſociété de s'en tenir à ces preuves juridiques, connuës, " reſpectées dans tous les tems, adoptées par la loi, et qui ſont le gage de la tranquillité publique : " à l'abri de leur autorité, chaque citoyen renfermé dans la condition que la providence lui a diſ- " tribué, ne cherche qu'à en remplir les dévoirs ; l'ambition et l'avidité, tenues en quelque maniére " captives, ne ravagent point la ſociété, les hommes ne ſe dechirent point, ne ſe deſhonérent point les uns " les autres, pour s'enléver les biens & les honneurs qui ſont le partage de chaque état ; on n'eſt occupé " qu'à s'éléver ou à ſe maintenir par les talens, par la vertu, par les ſervices que l'on peut rendre à ſa " patrie, & l'ordre public, du moins, conſerve tout ſon éclat.---Sacriſiera-t-on de ſi grands avan- " tages à la cupidité de quelques particuliers, qui pour ſortir de leur obſcurité, imaginent des " faites, les arrangent avec art, & n'ont pour tout reſource que les incertitudes de la preuve teſti- " moniale---C'eſt faire injure à la ſageſſe qui preſide aux jugements de la cour, que de lui propo- " ſer des principes ſi funeſtes."

If theſe be the Maxims of Juſtice, Mr. *Douglas* has proved his Poſſeſſion of the State of Filiation in the ampleſt Manner ; and his Title to that State ſtands on the broad Bottom of two Preſumptions approved by the Law ; the one in Favour of an actual, pure, uninterrupted, unqueſtioned Poſſeſſion from

from the Time of his Birth to the Commencement of this Action; the other in Favour of the Innocence of his Parents, who muſt be thought guilty of a Crime capital by the Imperial Law, and that of *France*, the Scene of the ſuppoſed Crime.

Suppoſe nothing elſe were alleged, would he not be intitled to have the Poſſeſſion of State adjudged to him? If any Thing be alleged to the contrary, the Burden of proving it muſt lie in the Alleger.

The Idea which the Purſuers have, that the *Crimen Partus ſuppoſiti* may be proved by Preſumptions and Conjecture, has been in Part examined before. It is impoſſible to meet ſo general a Propoſition with cloſe Argument; for it will occur hereafter to conſider their Principle under each ſeparate Head of Allegation. In the mean Time this is manifeſt, that neither that, nor any other Crime is to be preſumed, "Ut Crimen ſuppoſiti Partus non præſumatur, ſicut nec præſumitur "falſum." *Menoch. de Preſumpt.* Lib. 5. Preſumpt. 24. n. 1. as cited by *Farinacius*.

CHAP. V.

Of the further Preſumptions which the Caſe affords in Favour of the Defender.

IT has been proved in this Cauſe, that Mr. *Douglas* had a ſtriking Reſemblance to his elder Brother, Sir *John Stewart*. It appears alſo, that *Sholto* was the very Image, as the Witneſſes expreſs it, of Lady *Jane*.

Maſcardus cites great Authority that "Quiſpiam præſumitur ejus eſſe Filius cujus Formam vel "Effigiem habet:" And, though others have thought to the contrary, he agrees that "facit "aliqualem Præſumptionem; inducit qualem qualem Suſpicionem."

It certainly forms a Preſumption in the Belief of Mankind, founded upon common Obſervation, both antient and modern, Τίκτουσι δὲ γυναῖκες ἐοικότα τέκνα γονεῦσι; and the *Lymirnians* and *Ethiopians*, who had Wives in common, are ſaid to have choſen their Children by Likeneſs of Feature.

The Purſuers have alleged, that Lady *Jane* was in a Condition which was incapable of conceiving; and that in Fact, for the nine Months before the Delivery, ſhe appeared in a State which demonſtrated that ſhe was not pregnant. It turns out in Evidence that ſhe was pregnant; and every Circumſtance which denotes Pregnancy, even to the excluding all Heſitation to pronounce her ſo, in the Opinion of their own Witneſſes, have been proved.

Upon this, the Defender founds another Preſumption in Law, that all thoſe Witneſſes are not perjured; and he hopes that will ſtand till the contrary is proved.

They have alſo alledged, that ſhe has been traced into Situations which exclude the Poſſibility of a Delivery.

Upon this it has been proved, that ſhe was actually delivered, by two Witneſſes; and the Story they have told is confirmed by many others, and bottoms another Preſumption upon this, That they alſo ſhall not be deemed perjured till they are actually proved ſo.

Theſe laſt Articles are what the Civilians call the *vera & plena Probatio*. They go to the Title of Filiation, as well as to the Fact of Poſſeſſion. Unleſs the Purſuers can by ſome competent Matter alledged and proved, convict the Witneſſes of Perjury, or clearly avoid the Effect of their Teſtimony, theſe Articles muſt ſtand for proved. Now can there be any Doubt, but that every ſuch Allegation muſt be proved by themſelves?

The Defender therefore ſtands, as he ſtood originally, on the Preſumption of Poſſeſſion in himſelf, and Innocence in his Parents. As the Cauſe advanced, he gained more Ground, and more of Preſumption upon the Facts of Pregnancy and Delivery; and theſe form the Title he has to put the adverſe Party upon alleging and proving.

PART III. BOOK I.

Of Lady JANE's Capacity to conceive.

CHAP. I.

General Obſervations.

THE Pregnancy of Lady *Jane* is the Article which preſents itſelf firſt to Conſideration, not only in regard to the Order of Time in which it happened, but in reſpect of the important Effects which ſettling this preliminary Queſtion, in one Way or other, muſt have upon all the Reſt of the Caſe.

Senſible of this, the Purſuers have made their chief Attack here—The Commencement and Progreſs of it was pointed out to them in the Service, and the Places where Lady *Jane* appeared in that Condition. In the Year 1762, before either Suit was commenced, they had been at thoſe Places, and the Information they received confirmed the Truth of the Fact. In the Caſe which they pretend to have laid before their *French* Council in *November* 1762, all the Suſpicion they ſtate of the Pregnancy conſiſts in this, That Mademoiſelle *Hibert*, though ſhe obſerved *que Madame Stewart portoit l'Air d'une Perſonne enceinte*, did not ſeem ſo near her Time, according to the Obſervation ſhe could make, under a Hoop and Dreſs calculated to hide more than ſhew it; and in the Anſwer given to a Caſe laid before them *December* 10, 1762, they mention that Circumſtance, that her Pregnancy did not appear advanced. In the firſt *Plainte* to the Parliament of *Paris*, *December* 16, they put it as the Suppoſal of the Parties, that at *Rheims* Lady *Jane ſe trouvante enceinte et prête d'accoucheur partit*, &c. In the third *Plainte* of *March* 26, 1763, they charge her with pretending a Pregnancy at *Aix*, and inſiſt that at *Rheims* ſhe had no Appearance of it whatever. They framed their Charge in the ſame Manner in their Condeſcendence of Facts given into the Court of Seſſion the 29th of *June*, 1763; and ſo they continued to alledge in all their numerous Libels in *France*, till they heard the Evidence, when they changed their Stile ſo far as to inſiſt that the Symptoms (though Tokens of Pregnancy) were not concluſive Proof of it. They were afraid of this Evidence from the firſt, and at laſt could not tell how to diſpoſe of it: It was a Plan impoſſible to maintain, and ruinous to abandon.

If Lady *Jane* was pregnant, there is a ſhort End of this Cauſe---She muſt have been delivered of that Condition either by Miſcarriage or by lying-in. If ſhe lay-in, the Purſuers muſt prove what became of her Children; or Mr. *Douglas* and his Brother muſt, *ex Evidentia Rei*, be taken for the Fruit of that Delivery. If ſhe miſcarried, they muſt prove that---Now every Doubt they affect to raiſe, is calculated by themſelves to ſpring only out of the Suppoſition of no Pregnancy, and no Tittle of the Evidence applies to the Caſe of that being real; nor do they attempt to apply it ſo.

If ſhe was not really pregnant, but, as their Argument ſuppoſes, had only the Symptoms which denote it, that only ſtrikes off their ſecond Hypotheſis, *viz.* that ſhe diſſembled Pregnancy, and concerted a fraudulent Plan to ſteal Children: But it lies upon them to prove by ſome Evidence or other, (in the Face of ſuch Symptoms) that ſhe was not really pregnant: Of this they attempt no direct Evidence. And when they have admitted that ſhe had honeſtly thoſe Tokens or Appearances which, ordinarily, are ſufficient to prove Pregnancy, and conſequently that ſhe went to *Paris* with no bad Deſign, they muſt produce a Caſe minutely circumſtantial and pointed, clear and ſtrong indeed, to arreſt the Concluſion that ſhe alſo was (what thoſe Tokens are allowed in general to prove) really pregnant.

If it can be proved (as all Facts which are to be the Ground of legal Deciſions ought) by direct and concluſive Evidence of the Diſcovery of the Fraud, that ſhe counterfeited a Pregnancy, it would ſmooth the Way to the reſt of their Caſe, however unſucceſsful their Labours appear at preſent. In truth, that Ground once made indiſputable that *ſhe never was pregnant*, ſupercedes the Neceſſity of doing what at preſent they have attempted in vain: But ſo far from having made ſuch Ground, even the ſanguine Stile in which they always plead, aſſerts no more in this Part of the Caſe, than to have raiſed a Doubt, for the Solution of which they refer to the Reſidue of the Proof. The Reſidue ſhall be conſidered as ſoon as poſſible---Mean while it is fit to clear up what precedes it; for every Branch of their Caſe refers to a Reſidue for its Support. They are continually taking Credit for what they never perform; and the Falſehood of the Argument is hid under the Confuſion of it.

It is enough for Defence to repel the Attack, and for that it is enough to ſtate it with its own Concluſion: But after a Period, in which above half the World of that Time, and above three fourths of thoſe advanced enough in Age to converſe with Lady *Jane*, are buried, Accident has yet produced a Body of Evidence ſufficient to eſtabliſh the Fact of her Pregnancy, unleſs ſuch a Fact cannot be proved at all. Hard indeed if the Want of ſuch Evidence ſhould impute Fraud, and if the producing it ſhould not maintain Innocence.

CHAP. II.

Lady Jane's *Miſcarriage.*

IT is obſervable, that in diſcuſſing the Evidence of Pregnancy, the Purſuers have taken no Notice of Lady *Jane's* Capacity to bear Children; but affect to fling it by, under the Head of the Defender's collateral Arguments; and yet it appears as formerly ſtated, that Lady *Jane's* Incapacity was the firſt of thoſe Falſehoods which Mr. *Archibald Stuart* told the Duke of *Douglas*, and propagated among her Friends in *Scotland*; and it appears to be the Corner-Stone of thoſe Rumours which were argued in Impeachment of univerſal Habit and Repute.

Perhaps this Conduct is fully accounted for, by reflecting that her Capacity to bear Children renders her Pregnancy a very natural and probable Event, and makes it withal inconceivable that ſhe ſhould entertain the Purpoſe of ſtealing other Children to diſappoint her own probable, or, if they will, poſſible Offſpring. On their Side no Evidence is produced to this Point; on the Defender's, the Caſe ſtands thus:

The only Mark of a general Capacity to bear Children is the *Menſes*. Theſe continue in particular Subjects to very late Periods of Life; but ſuch Inſtances are extraordinary. The uſual Time of their going off is at the Age of Fifty. *Circa quinquageſimum annum menſes omnino feminas ſanas deſerunt et una fecunditas.*

Haller. Phiſiolog. lib. 28. Sect. 3. § 2.

Hoffman, v. 5. p. 318. *Non vero omnibus ſubjectis femininis profluunt menſes, ſed tantum generationi aptis interdum durat hic fluxus ultra quinquageſimum annum.*

Maureceau, tom. 1. p. 49. It is deſtined by Nature, *pour ſervir de matiére à la generation de l'Enfant et à ſa nourriture durant qu'il eſt au ventre de la mere.*

It would be needleſs to cite the Opinions of the phyſical Writers, who all concur in this general Propoſition, that Fifty is the Age when the Menſes uſually go off; that Fœcundity is produced by them, and continues with them.

Appendix to Def. Mem. p. 18. G. An Objection was made that ſuch Fœcundity might do for ſingle Children, but not for Twins. Thouſands of Inſtances prove the Opinion of *Clerk*, *Auſtin*, *Young*, and *Smith*, who were examined to this Point, to be true.—That as long as Fœcundity laſts it might be preſumed to produce Twins as well as ſingle Children; and if Twins at Fifty are rare, they are only in Proportion to the Production of Twins at other Ages.

D. P. 385. G. —— 386. A. As to the Fact of her having this Proof of Capacity, Dr. *Eceles*, who attended her as Phyſician before ſhe went Abroad, ſpeaks of it, and conceived from thence ſhe had the Capacity of bearing Children. *Margaret Kerr*, who lived Servant at *Drumſheugh* at the ſame Time, ſpoke of her Capacity to have Children as a Thing ſhe never doubted. *Helen Ferguſon*, who waſhed for her both before ſhe went Abroad and after her Return, depoſes to her full Knowledge of that Circumſtance. *Iſabel Walker* obſerved theſe Symptoms home to the Time of Lady *Jane's* being with Child in 1747, and after the Delivery.

P. P. 47. C. D. D. P. 386. G. —— 387. A. B. Min. 11. G. J. at the End of the Def. Mem.

D. P. 59. G. C. Let. D. F. Mad. *Mayette*, where Lady *Jane* lodged at *Rheims*, after her lying-in, atteſts, that ſhe obſerved the ſame Thing, and had no Doubt of her Capacity to bear Children, which ſhe depoſed alſo in the *Tournelle*, *Parceque un Arbre que porte des Fleurs peut porter des Fruit.* *Jane Grieg*, who lived with her half a Year in 1751, concurs in the ſame Teſtimony. *Janet Andrews* lived with her in 1752, and ſpeaks of it with great Particularity from the Obſervation ſhe took of the Sheets where Lady *Jane* lay alone, and of her Linnen, which ſhe and *Iſabel Walker* helped her to ſhift. *Margaret Brown*, who was Servant to *Helen Ferguſon* above-mentioned, confirms her Miſtreſs as to the Time after Lady *Jane's* Return. Add to this, that Lady *Jane* was well made, and of a Habit and Complexion which preſerved the Figure of Youth much longer than uſual; Circumſtances which added to the Probability of her Breeding.

P. 344. E.

D. P. 387. G. —— 388. A. B. —— 387. C. D.

P. M. pt. 5. p. 13. Upon this the Purſuers doubt the Fact—the Anſwer is—Read the Evidence.

Lady *Jane* might counterfeit the Symptoms, the Marks being very eaſy to imitate. A Deed may be forged, therefore no Deed is true!—She certainly did counterfeit them, becauſe ſhe counterfeited

terfeited Miſcarriages.—Let this Argument wait till the Fact be proved, and then it will only want a Concluſion.

Her Capacity of bearing Children weighs nothing againſt the direct Proof of Impoſture—True; and the very Uſe of the Preſumption ariſing from it, is to drive them to that Sort of Proof. P. M. pt. 5. p. 2

It will appear from a Miſcarriage which happened to Lady *Jane* at *Rheims* in the Beginning of *December* 1748, that ſhe was not only in the Capacity of bearing Children, but actually in the Habit of Breeding.

Mrs. *Jane Grieg* was at that Time Servant to Lady *Wigton*, at *Rheims*, with whom Lady *Jane* lived in great Intimacy; ſhe thought that Lady *Jane* was with Child, and uſed to talk about it to Mrs. *Hewit*; and *Tibby Walker* ſaid ſo too; and once ſhe mentioned it to Lady *Jane*, who bluſhed a little, and made no Anſwer. One Day in viſiting Lady *Wigton*, her Foot ſlipt, and ſhe ſtrained her Back in endeavouring to ſave her Fall. When ſhe came in ſhe ſeemed uneaſy, complained of a Pain in her Back; whereupon *Jane Grieg* gave her a Cordial, and ſent her Home in a Chair. She remained ſome Days at Home ill; and *Grieg* learned from Mrs. *Hewit* and *Tibby Walker*, that it was a Miſcarriage. Serv. 16. F. G. —— 17. A. B.

Iſabel Walker ſays, that Lady *Jane* had been with Child between two and three Months when the above-mentioned Accident happened to her in going to Lady *Wigton*'s; that ſhe came Home ill, and was confined for ſome Time: It was three Weeks before ſhe recovered her Strength; and ſome Time, how long ſhe does not remember, before ſhe got out of Bed.—She was the Perſon who carried the Abortion away. She thinks that Mrs. *Hewit* might have ſeen it, but does not remember whether any Body elſe in the Houſe did, or did not; for it was a Lump about the Bigneſs of four or five Fingers contracted; and there was no formed Conception of a Child to be ſeen in it, not formed into Shape or Body, ſo as to be diſtinguiſhable; but if ſhe was talking to a Woman, ſhe could explain the Matter more particularly. Serv. 21. E. D. P. 367. G. —— 368. A. D. —— 371. B. C.

Nurſe *Mangin*, ſpeaking of the ſame Miſcarriage as happening by a Fall on Lady *Wigton*'s Stair-caſe, ſays, That after laying the whole Night in Pain, ſhe miſcarried between Eight and Nine the next Morning. She met *Effy Caw* upon the Stairs with a Chamber-Pot, who cried out, "My "God, dear Nurſe, what an Accident!" Nurſe aſked her what ſhe had got there. A Miſcarriage, anſwered *Effy*, of Mad. *Steuart*. Upon which the Nurſe had the Curioſity to remove what was in the Pot, and lifted up a Fœtus, which ſhe knew to be a Male-Child, of the Length of ſeven or eight Inches. *Effy Caw* was alone with her at this Time, and was the Firſt to obſerve it was a Male-Child: They ſtaid together but an Inſtant, for *Effy* went immediately to throw it into the Little-Houſe. Lady *Jane* kept her Bed about ten or twelve Days, and her Chamber about a Fortnight more, without even coming into the Nurſe's Chamber; but the Child uſed to be carried in to ſee her: She was dreſſed like a ſick Perſon, looked extremely pale, and ate ſcarce any Thing but a little Broth. —— 141. F. G. —— 142. A. C. —— 141. K. G. —— 145. A. B.

Mrs. *Hewit* relates, that about a Month after the Chriſtening, Lady *Jane* fell again with Child; and when near three Months gone, in coming Home from Lady *Wigton*'s, ſhe met with the above-mentioned Accident, and miſcarried the next Day; upon which Occaſion ſhe was much worſe than ſhe had been on the Delivery of the Twins. She thinks Mad. *Mayette* knew of this Accident, but does not know whether Mad. *Maillifer* did. She remembers Mrs. *Jane Grieg* being ſent by Lady *Wigton* to enquire after Lady *Jane*, and that ſhe told Mrs. *Grieg* it was owing to the Accident of ſlipping a Foot, and hurting her Back, and concealing it at firſt, after which every Thing went wrong; but ſhe remembers no more of Mrs. *Grieg*'s Anſwer, than that ſhe expreſſed herſelf ſorry for it: As all was over, Lady *Jane* would not ſuffer any Phyſician to be called in. Serv. 13. A. C. P. P. 255. G. L. —— 257. A. B.

Mad. *Maillifer*, whom Sir *John Stewart* was in the Habit of viſiting often, as ſhe lived but croſs the Street, relates that upon the Occaſion of ſome Viſit he made her, ſhe does not recollect whether it was in the *Autumn* or *Spring*, only that it was very cold Weather, he told her that Lady *Jane* had had a Miſcarriage. Upon which ſhe ſent to enquire after her daily, and at the End of four or five Days, went to viſit her, and found her up and dreſt, at which ſhe teſtified ſome Surprize, and more particularly at her wearing Whalebone Stays: But Lady *Jane* told her that ſhe always wore them even when ſhe was with Child; and in the Courſe of the ſame Viſit, Lady *Jane* ſhewed her the Stays, which were laced on each ſide as pregnant Women uſually wear them. D. P. 147. F. G. —— 148. A. B.

Lady *Wigton* was examined on the Service by Commiſſion, ſhe being then ſick and unable to go Abroad. Her Evidence is on that Account exceedingly ſhort and imperfect upon every Head, and ſhe died before the Reduction was ripe for another Examination. She remembers however having ſent to enquire after Lady *Jane* on this Occaſion; and the Repreſentation which *Grieg*, her Servant, reported from Mrs. *Hewit* was, as ſhe recollects, that in walking home from her Lady *Wigton*'s Houſe, ſhe had ſlipt a Foot, and hurt herſelf, which occaſioned a Miſcarriage. Serv. 28. E. D.

D. P. 359. c. Miſs *Primroſe* lived in Family with Lady *Wigton*, and remembers hearing it talked of at the Time by Lady *Wigton*, and Mrs. *Grieg*, and by *Tibby Walker*, and *Effy Caw*, Lady *Jane*'s Women, that Lady *Jane* was with Child. She alſo remembers the Account of her Miſcarriage as then reported by Mrs. *Grieg*, who was ſent to enquire after her; that it followed upon the Accident of ſlipping a Foot as ſhe was going to viſit Lady *Wigton*; ſhe remembers alſo hearing of her being confined to her Bed, and ſhe ſaw her before ſhe was perfectly recovered—Nobody conceived a Doubt of her having actually miſcarried.

D. P. 54. r. c. Lieut. *Mackenzie*, who was then at *Rheims*, and converſed intimately with Sir *John* and Lady *Jane*, remembers that Lady *Jane* kept her Room, and that ſhe was denied on Account of her being ill of this Miſcarriage.

Serv. 35. a. r. To this may be added a Letter, which Mrs. *Hepburn* produced in the Service written to her by Mrs. *Hewit* on the 21ſt of *December*, 1748, in which ſhe deſcribes Lady *Jane* as having been ill three Weeks before; "That ſhe had been in a mighty good Way for ten Weeks, but in coming "from Lady *Wigton*'s, ſhe ſlipt and wrung her Back. This ſhe did not tell Mrs. *Hewit*, or ſhe "would have had her bled directly, the next Day ſhe fell ill with a Witneſs."—There can be no Doubt but this Letter relates to the Miſcarriage, though it does not directly mention it.

The Evidence has been ſtated very full, becauſe the Purſuers have been juſtly anxious to diſprove an Event which raiſes ſo ſtrong a Preſumption againſt their Hypotheſis.

P. M. Pt. 5. p. 2. Firſt, They recur to the two uſual Topicks.—They Promiſe, *in the Sequel*, to prove the Fact of Impoſture; upon which they obſerve that the Habit of Breeding will be no direct Anſwer to it; and it is agreed that the ſtrongeſt Preſumptions muſt fall when the contrary is expreſsly proved.

Secondly, They undertake that Lady *Jane*, Sir *John Stewart*, Mrs. *Hewit*, and *Tibby Walker*, ſhall be proved the Authors and Accomplices, and perjured; and it will be unkind to give them Credit in the mean Time, that is to ſay before they are proved undeſerving of it.

Thirdly, The Story has internal Marks of Falſehood. Mrs. *Hewit* in her Depoſition contradicts the Account in her Letter, and places the Conception a Month too late, depoſing thirteen Years after the Event, and relating currently an Article not then conteſted. She drops that Lady *Jane* fell with Child a Month after the Chriſtening: Perhaps that was in Truth the Time when it was firſt perceived, and then ſhe is right in both—Perhaps it did not occur to her exactly when the Chriſtening was; but whether ſhe was wrong or right in ſuch a Circumſtance, what a ridiculous Ground to find five People perjured upon!

Fourthly, But Mrs. *Hewit* is miſtaken again; ſhe ſays the Accident happened in *coming* from Lady *Wigton*'s, and ſo does Lady *Wigton*; whereas all the Witneſſes place it in *going thither*. That is a Miſtake, for Nurſe *Mangin* thought it had happened by a Fall on Lady *Wigton*'s Stair-caſe, which though it increaſes the Number of Diſcrepancies, as the Purſuers call them, ſhall not provoke a ſerious Anſwer.

Fifthly, It cannot be true that Mrs. *Grieg* received her at Lady *Wigton*'s, and finding her diſordered ſent her back in a Chair. Firſt, becauſe Lady *Wigton* muſt have known that, and yet ſhe depoſes that Mrs. *Grieg* told her from Mrs. *Hewit*, that the Miſcarriage happened in walking home from her laſt Viſit. Now Mrs. *Grieg*, who knew exactly how it happened, could not have given that Account to Lady *Wigton*; Mrs. *Grieg* could not know a Miſcarriage had happened till ſhe learnt it from Mrs. *Hewit*; that was the only material Article of her Report to Lady *Wigton*: And the Imputation of Perjury has its whole Dependence upon this Idea, that it is abſolutely impoſſible Lady *Wigton* ſhould not retain for thirteen Years, and deliver upon her Sick-Bed, an exact Detail of every little Circumſtance attending ſuch an Event.

Sixthly, There muſt be Perjury in it. For Mrs. *Hewit* ſays, in her Letter, that Lady *Jane* concealed the Accident from her till the next Day, when ſhe was ill with a Witneſs; whereas Mrs. *Grieg* ſays, ſhe went home out of order in a Chair, and *Iſabel Walker*, that ſhe came home ill, and continued ſo for ſome Time. Mrs. *Hewit* is delivered from this pointed Charge of Falſhood, if it can be conceived, that ſhe either did not ſee the Chair, or did not think Lady *Jane*'s uſing one an extraordinary Thing; and that Lady *Jane*, though out of order, did not think the Accident of ſo much Conſequence as it proved the next Day, when ſhe explained it to the Family.

Seventhly, Nurſe *Mangin* was ſuborned by Bribery; and the Perjury ſhe committed in conſequence, is marked in differing from *Iſabel Walker*, and in her Account's being impoſſible in Nature.

P. P. 1031. B. 1. —— 1032. A. B. The Bribery conſiſts in this——M. *Billet*, *Curé* de *Pouilly*, begged the Favour of the *Abbé Colbert*, Vicar General of *Thouloufe*, to buy him ſome Books. This the *Abbé* did, to the Amount

mount of ſixty-three Livres, and ſent him the Account of it, with orders to diſtribute it in his Pariſh. *Mangin*, the Huſband, laboured under the moſt deplorable State of Poverty and Sickneſs, which ended in his Death. They had been upon the Liſt of the Poor, and in that Rank had a Share of theſe ſixty-three Livres, among other Articles of Charity. But he did not live to be examined, and his Widow never received any Succours after his Death; nor did either of them ever know from whence the Charity came. This is the Proof of thoſe two reverend Perſons being Suborners to Perjury. D. P. 610. F.

The ſecond Inſtance of Bribery is, That ſhe got twelve Livres for coming backwards and forwards to *Sedan*, to be examined, which is eight Leagues; and that a Maid-Servant of the Dutcheſs of *Douglas*'s gave her a ſhort Coat and Petticoat of Cotton and Linen, being then almoſt naked; which ſame Preſent ſhe wore at the Time of her Examination —— 601. E. F.

It is not for the Sake of the Dutcheſs of *Douglas*'s Defence, that this contemptible Effort to revile her is taken Notice of, but to expoſe the Arts of ſuch Accuſers. They knew that Nurſe *Mangin* was examined, upon Commiſſion from the *Tournelle*, before any Agent from the Defender had come near her: And that ſhe had depoſed to the ſame Effect there, appears from M. *D'Anjeu*'s *Extract de la Procedure extraordinaire*, which reports that ſhe had given a bad Depoſition upon the Age of the Child, and of the Miſcarriage. D. P. 599. E. F.

But whether ſuborned or not, their own Witneſs is perjured, becauſe ſhe differs from *Iſabel Walker*, who ſaw nothing but an unformed Maſs: Nurſe *Mangin* tells how ſhe examined it, by removing the Matter from about it, and lifting up the *Fœtus*. The Proof of her Perjury then depends upon eſtabliſhing it; as if it were utterly impoſſible, that Lady *Jane's* Maid, in the Hurry of her Attendance, on the ſudden Illneſs of her Miſtreſs, ſhould overlook what a Woman who had Children herſelf, not ſo engaged, ſaw.

But the Purſuers ſay further, That her Deſcription of it is impoſſible in Nature; for one Mr. *Robert Smith*, a Surgeon, ſays, That a *Fœtus* of three Months may be from one Inch and an half to three Inches in Length; and Dr. *Young* ſays, That the common Size of a Fœtus between two and three Months is about an Inch; but he does not know long it may be, when lifted up at the End of a Stick. P. P. 491. G. —— 493. D. F.

Whether theſe Gentlemen, who differ as between one Inch and three, ſpeak from actual Obſervations of their own, or from general Reading, does nor appear. But the laſt Article in Dr. *Young*'s Evidence opens to a very natural Explanation, which reconciles his Idea to the Teſtimony of Nurſe *Mangin*, if indeed there be the Shadow of Repugnance in them——A Witneſs, who needs no purging of partial Council, writes thus concerning Embryos: "*Avant le Fin du troiſiéme Mois, la Téte eſt courbée, ayant le Menton poſé ſur la Poitrine, les Genoux ſont relevés, les Jambes repliées en arriere, ſouvent elles ſont croiſées, et la Pointe du Pied eſt tournée en haut, et appliquée contre la Cuiſſe en ſorte que les deux Talons ſont fort près l'un de l'autre; quelquefois les Genoux s'elevent ſi haut, qu'ils touchent preſqu'aux Joues; les Jambes ſont pliées ſous les Cuiſſes, et le Plante du Pied eſt toujours en arriere, les Bras ſont abaiſſés et repliés ſur la Poitrine; l'une des Mains, ſouvent tous les deux, touchent le Viſage; quelquefois elles ſont fermées; quelquefois auſſi les Bras ſont pendants à Coté du Corps.*" Buffon Hiſt. des Animaux, tom. II. p. 384, 385.

Thus the Embryo lies before it is ſtretched. What Length it may extend to, the living Witneſſes do not aſcertain; but in *Cooper*'s anatomical Tables, the Skeleton of a Fœtus three Months old, is four Engliſh Inches and a half.

Eighthly, The Purſuers inſiſt on Mad. *Maillifer* ſeeing Lady *Jane* up, and dreſt in four or five Days following the Miſcarriage, with Whalebone-Stays on, which, they ſay, impeaches the Truth of a Story, which muſt and does ſuppoſe her to lie-by longer.

She did not recover it in leſs than three Weeks, but how long ſhe lay a-bed, does not appear. *Iſabel Walker* ſays, ſhe got up as ſoon as ſhe could; Nurſe *Mangin* thinks ſhe lay ten or twelve Days; no other Witneſs ſpeaks of the exact Number of Days, at the End of ſixteen Years.—It is impoſſible to be certain what Space of Time preſented itſelf to the Memory of either, as being about ten or twelve, four or five Days. Add to this, that Mad. *Maillifer* computes from the Time of Sir *John*'s Viſit, which might be ſome Days after the Accident. D. P. 603. B. C.

Ninthly, There is an unſigned Letter extant, ſuppoſed to be written by Lord *Blantyre* to Sir *John Stewart*, and to be dated 29th *December*, in which the Writer ſays, "I am very glad to find by your laſt, that the News of Lady *Jane*'s being ill, was but a falſe Report; I wiſh it may never be interrupted but to give birth to young." Serv. p. 55. A.

Is it alledged, upon this ſingle Foundation, that ſhe was never ill at all, and that all the Witneſſes are perjured from Beginning to End? And does this Allegation come from thoſe who compliment Sir *John Stewart* with the fineſt Head for a Plot, which was ever employed in that Manner, while Lady *Jane* was forging Evidence of a Miſcarriage, he is ſuppoſed to write ſhe is very

very well? The Solution is eaſy enough; it muſt have been an Anſwer to ſome Letter written before the Accident happened.

Tenthly, Miſs *Primroſe* is too zealous for a Witneſs; though, in fact, it appears ſhe takes nothing on her own Knowledge.

Eleventhly, Mrs. *Grieg* diſgraces herſelf by ſaying, ſhe thought Lady *Jane* was with Child, though by Mrs. *Hewit*'s Account, ſhe was not three Months gone: As if no Symptoms occurred in the firſt three Months, which might raiſe ſuch Thoughts in the Maids, when they were talking together of their Miſtreſs.

Twelfthly, That Lady *Jane* often reſorted to this Trick, to make People think ſhe was capable of bearing Children; and they offer to produce four Inſtances of it.

For ſo long at leaſt as this Objection is under Conſideration, let all the Witneſſes who have nothing to do with it be delivered from the Charge of a Plot; Sir *John Stewart*, with his uſual Addreſs in marring a Plot, totally forgot them all; *Iſabel Walker* the Accomplice denies them; Mrs. *Hewit*, Lady *Wigton*, Mrs. *Grieg*, Miſs *Primroſe*, Mad. *Maillifer*, and the reſt, recollect not a Syllable of the Matter; and theſe Plots muſt be applied to wound the Credit of ſuch as had no Concern in them.

The firſt Plot was to raiſe a Report of a Miſcarriage having happened in *Holland*: This was to be done at *Aix-la-Chapelle*, where ſeveral Perſons reſided who knew her in *Holland*, though they knew nothing of the Miſcarriage. This was to be done to aſſiſt the Credit of Mad. *Tewis* and others, who ſaw clear Marks of Pregnancy about her at the ſame Time, and the Manner of executing it, was to be by a Whiſper between Mad. *Nigrette* and Mrs. *Hewit*: Sir *John* and the Reſt of the Family were to know nothing of the Matter: Mad. *Nigrette* was not to report it in ſuch Sort, that it ſhould ever come round to them. In ſhort, it was to be quite a new thing, a limited managed Rumour.

D. P. 498. c. —— 499. E. The Evidence of this deep-laid Scheme is this——Mrs. *Hewit* could ſpeak no *French*; Mad. *Nigrette* at that Time could ſpeak both *Engliſh* and *French*; Mad. *Nigrette*, ſixteen Years after, relates a Converſation, in a Language which ſhe had forgot, and which could never have been very familiar to her, with Mrs. *Hewit*, who ſpoke herſelf ſuch *Engliſh* as would have puzzled a Native of *South-Britain*; and after hearing (it is likely) much of the Miſcarriage, which happened at *Rheims*, ſhe ſeems to recollect that the Diſorder ſhe talked of was a Miſcarriage. And upon this ſlight Ground is built the Imputation of a formed Plan of Fraud and Falſhood againſt the whole Family.

—— 597. c. The ſecond Plot was at *Rheims*: The whole of this Nurſe *Mangin* has to herſelf; and the Purſuers inſiſt upon it as a Proof of her particular Falſehood. This rather derogates from the general Argument, that Lady *Jane* was in Uſe to give out ſuch Falſehoods. It looks, however, as if Nurſe *Mangin* thought ſhe ſpoke Truth, for ſhe takes no ſuch Knowledge upon her of this as ſhe does of the former. She ſaw nothing but the Linnen *remplis de Sang, plus Sang qu'à l'ordinaire*. It may have been an extraordinary Flux of Blood; but from this Time Lady *Jane* is ſuppoſed to have gone then two Months and a half from the Time ſhe was laid up: And other Similarity of Circumſtances, it ſeems more probable that ſhe confounded one with the other. If ſhe had meant diſhoneſtly, ſhe would doubtleſs have uſed a greater Variety of Circumſtance, and affected more particular Knowledge.

—— 608. c. f. —— 609. A. B. The third Plot of the ſame Sort was likewiſe at *Rheims*. In the Year 1749, Mad. *Rutlidge* was told by Mrs. *Hewit*, Lady *Jane* was ill of a Miſcarriage; but ſhe ſaw no more of it herſelf than this: Lady *Jane* was ill in Bed, called for a Napkin, and was in the Situation which Women are in monthly. This looks like a different Diſorder from a Miſcarriage, and as if ſhe had confounded it with the Story of the Miſcarriage the Year before, which ſhe might have heard from Mrs. *Hewit*, eſpecially as ſhe ſays ſhe never heard of any Miſcarriage but one; and this is much more probable, as Mad. *Rutledge*'s Memory is far from being accurate. She gives a particular Deſcription of the Children, and tells a Story of a Viſit made her with the two Children at *Marais*, with all the Circumſtances of who came in the Coach and who on Foot; when in Truth both the Children were not at *Rheims* at the Time. The Purſuers do not believe a Word ſhe ſays about the Children; but they are ſure ſhe is exact about the Miſcarriage: Upon which they form their Concluſion equally ſenſible and candid, that Mrs. *Hewit* has ſunk this Miſcarriage, becauſe ſhe grew aſhamed of the Number of them; ſo a Plan was laid by theſe very ſubtle People in the better Part of Life, while their Health and Underſtandings were perfect; ſuch as Mrs. *Hewit* was to be aſhamed of, when her Underſtanding, together with her Health, was broken with Age. They have forgot, however, to ſettle whether *Iſabel Walker* was aſhamed, or quite left out of theſe notable Schemes.

The

The laſt Trick of this Kind was played upon Mrs. *Maitland*, who was told by Lady *Jane*, that *after bearing her Children*, in making a Viſit to Lady *Home*, ſhe ſtrained her Ancle, and was obliged to go Home, where ſhe parted with Child. This is plainly the Story of the Viſit at *Rheims* to Lady *Wigton*, miſapplied in Mrs. *Maitland*'s Memory to Lady *Home*; and the Time alluded to, after bearing the Children, denotes that Accident which fell out a few Months after ſhe was brought to-bed. D. P. 386. E.

This is a Specimen of the Purſuers Way of Reaſoning upon Facts These are the Arguments by which the Court of Seſſion was called upon to find the baſeſt Falſehood in Lady *Jane*, of whom no living Witneſs could be found to inſinuate one evil Thought; Perjury in three other Eye-Witneſſes, who had no earthly Intereſt to miſrepreſent the Fact; an unexplained Degree of Falſehood in two more, who ſtood in the ſame Situation, and a Sort of Deception in the reſt, which alone would have been ſufficiently incredible; and they ſhall all be given up, if it can be ſhewn that any Court of Juſtice throughout the civilized World ever reaſoned ſo upon Evidence: But as long as it ſhall continue the Faſhion of Juſtice to aſcertain Facts by the Depoſition of Witneſſes, that which has now been related muſt be taken for true.

PART III. BOOK II.

Of Lady *Jane*'s Pregnancy.

CHAP. I.

Of the Motives aſſigned for Lady Jane's aſſuming Pregnancy, &c.

AFTER it has been ſhewn that Lady *Jane* had the Capacity to bear Children, and that ſhe was of a Figure and Temperament well adapted to it, and that ſhe actually bred at a Period ſubſequent to the Birth, it promiſes to be a Work of very great Difficulty to prove that ſhe was not pregnant of the Children ſhe is ſaid to have been delivered of on the 10th of *July*, 1748; but that ſhe aſſumed Appearances of Pregnancy, which ſhe had Reaſon to believe might diſappoint her own Iſſue.

In ſupport of this probable Syſtem, they have, in the firſt Place, aſſigned Motives which might have induced Lady *Jane* to ſuppoſe Children: In the ſecond Place, have examined a few Witneſſes who ſaw her in a Coach, or ſome other accidental Manner, during her Pregnancy, and who did not obſerve it; from which they infer that the Pregnancy was affected, and that many Witneſſes who ſwear her being with Child are perjured.

The Motives aſſigned are, that Lady *Jane* finding herſelf deep in Poverty and Diſtreſs, ſhe wanted to be reconciled to her Brother, hoping to procure an Increaſe of her Annuity: She obſerved alſo with Regret, that his great Eſtate and Honours were likely to ſink into the Family of *Hamilton*, which ſhe abhorred. Whereupon to attain one of theſe Ends, and diſappoint the other, ſhe took up the Purpoſe of ſupplying the Houſe of *Douglas* with Children; but as ſhe deſpaired of bearing any herſelf, that is not knowing her own Capacity to breed, ſhe determined to ſuppoſe an Heir. To that End ſhe married with Colonel *Stewart*, whom ſhe miſtook for an artful long-headed Man, and ſet off from *Scotland* with a Deſign to go directly to *Paris*, a large and populous City, where the Scheme could eaſily be executed, eſpecially as the Colonel had the Language, and a perfect Knowledge in the Laws and Cuſtoms of *France*; which only the Purſuers have found out. But when upon her Arrival at the *Hague*, ſhe found it impoſſible to get into *France* during the War, ſhe repaired to *Aix-la-Chapelle*, to wait for a more favourable Opportunity of carrying her Plan into Execution. Here the Moment ſhe perceived the Peace to approach, ſhe ſet about counterfeiting a Pregnancy, that ſhe might prepare the World for the Reception of her Children, and execute the Impoſition without Loſs of Time: And the Moment the Roads were open, ſhe went to *Paris*, the true old Place of Deſtination, by *Liege*, *Sedan*, and *Rheims*, that nobody might know ſhe was going there.

By ſuch Means ſhe hoped to enlarge her preſent Income, and ſecure her Succeſſion to his Eſtate, at leaſt to the Adminiſtration of it after the Duke's Death; and to have the Credit of giving Heirs to the Houſe of *Douglas*. She had likewiſe in her Eye another collateral Object, to diſappoint the next Heir of the Eſtate of *Grandtully*.

Theſe, as nearly as can be collected, ſeem to be all the Motives and Parts of the Plan aſſigned her, by theſe worthy Friends to her Memory—the Purſuers.

1. Her Poverty is proved by a Mortgage on her Bond of Proviſion for 700 *l.* which ſhe had borrowed to pay partly her Mother's Debts, which ſhe had bound herſelf to diſcharge; partly thoſe which.

which ſhe had neceſſarily contracted by her Manner of living; and alſo the Sums borrowed in 1747 and 1748.

It is a ſtrange Way of reaſoning, which makes the Poverty occaſioned in the Execution of a Plan a Motive for committing it. But, ſtriking that out of the Account, ſhe was certainly poor, though not quite ſo poor as thoſe who, having much, wiſh for more; ſhe was not poor of Soul.

2. That ſhe wanted to repoſſeſs her Brother's Affection is alſo true. But it does not appear that ſhe was inclined to attempt it at the Expence of her Honour, or even of her Pride: On the contrary, if her Expreſſions on that Subject prove any thing, ſhe diſdained ſuch Attempts a little too much for her Intereſt; and of all poſſible Schemes to regain his Affection, this was the moſt unpromiſing, and the moſt unlikely for her to embrace, who had never yet ſtooped to take up any.

3. That either of them had any Averſion to the Family of *Hamilton*, or their Friends, at the
P. P. 524. c. Time in Queſtion is not true: On the contrary, they expreſſed themſelves with Kindneſs, and Reſpect of that Family, and Sir *John* wrote to *Archibald Stuart* as an old Friend, in 1748; Lady
Serv. 41. D. *Jane* alſo conſidered him in the ſame Light in the Year 1752, till ſhe actually found he was uſing the moſt inhuman and unjuſtifiable Means to irritate her Brother againſt her.

4. It is going far indeed for a Motive to ſuppoſe ſhe wanted to diſappoint the next Heir of *Grandtully*: The Colonel had then a Son by a former Wife, grown up. And that ſhe ſhould go into ſuch an Idea, is a Suppoſition not worth an Anſwer; eſpecially, if it be alſo ſuppoſed that ſhe married him for that Purpoſe.

5. That ſhe hoped to encreaſe her preſent Income, either by the Marriage, or the Pregnancy, or the Birth, is wholly inconceivable in any Period of the Project, or Execution of the imputed Scheme.

She was ſure to involve herſelf in much additional Expence. Her Income was ruined by it in Fact: Such a Marriage was the moſt probable Means of ſetting her irretrievably wrong with her Brother: It was uſed to that End by her Enemies: It had that Effect: She knew it muſt have ſuch Conſequences: It was for that Reaſon ſhe fled and concealed it: If ſhe had imagined otherways, would ſhe have been two Years in revealing it to him? If ſhe had flattered herſelf with any ſuch Hopes from counterfeiting a Pregnancy, ſhe would at leaſt have tried how it was likely to take, before undertaking ſo troubleſome and hazardous a Scheme; ſhe would have owned the Marriage, and have broke the Pregnancy to him by Degrees, at a Diſtance, and by third Hands. Inſtead of which, ſhe does not tell him of either, till ſhe is abſolutely compelled to reveal both; but if ſhe had ever flattered herſelf in that Manner, the Duke's Conduct muſt ſoon open her Eyes. She wrote him on the 10th of *April* 1748, informing him of both. He made her no Kind of Anſwer, and the News ſhe had of the Reception her Letter met with was, that the Duke was in a Paſſion, and threatened to withdraw her Penſion—What Inducement had ſhe to perſiſt? A Miſcarriage was much eaſier to counterfeit than a Birth, and no intereſted Relation would have enquired after that. However, the Purſuers are obliged to ſay ſhe does perſiſt, and in this deſperate Situation undertakes to produce Twins—though one, according to the Purſuer's Account, was hard enough to procure; and all this to increaſe her Income: One Child, it ſhould ſeem, would have been thought full enough for that Purpoſe, eſpecially after ſhe had been diſtreſſed ſo much in the Reſt of her Plan; and the whole Ground for putting this Interpretation upon her Conduct is, that when ſhe was actually with Child, and after ſhe had Twins, ſhe gave that as an additional Reaſon for begging her Brother's Aſſiſtance, and held up their little Hands to implore his Compaſſion.

6. That they expected to ſucceed either to his Eſtate, or the Adminiſtration of it, has ſome further Improbabilities. Sir *John Stewart* was older than the Duke; ſhe not much younger, but much weaker; and Diſtreſs is no good Promoter of long Life. The Duke had ſhewn no Signs of being about to depart ſoon; and yet ſhe muſt be ſuppoſed, to take upon her a Plan of heavy and immediate Expence, for the hopeleſs Proſpect of living after ſhe ſhould become too old to enjoy Life in the Face of certain Diſtreſs, and immediate Hazard of Infamy.

7. The Motive ariſing from the Credit of giving Heirs to ſo illuſtrious a Family, is an Imputation which is downright repugnant and deſtructive of itſelf.—Every Conſideration of Blood, Family, and Honour, which could move her to wiſh for Children (if indeed ſhe had ſuch Wiſhes at laſt, which never ſeem to have influenced her before) would make her revolt againſt transferring the Eſtates and Honours to the Children of others, eſpecially to the Brats of Beggars; and that in Preference to many Lives actually derived from the Stock of *Douglas*.

The Plan of their original Deſtination was *Paris*, a large populous Town, which Sir *John*, from his intimate Knowledge of *French* Laws and Manners, knew to be of all other Places in the known World the moſt commodious for executing ſuch a Fraud.—It cannot be forgot, that in

in thirty-three different Publications, they have deſcribed *Paris* to be large indeed, and populous; but under a Police ſo accurately planned, and ſo attentively executed, that no Individual of that great Multitude moves, or lives, but under the conſtant and immediate Eye of the public Magiſtrate. Admirable Order! *l'Ordre unique peut-être obſerve en France*; whereby every Houſe, and every Inhabitant of every Sort, ſtands recorded for ever; and in Conſequence whereof People might lie better hid, and be much ſooner forgot in any ſmall Market-Town of *Great-Britain*.

It is not fair, however, to preſs them with this, becauſe this *Ordre unique* is certainly an unwieldy Scheme, which no Induſtry can execute; for it does not depend upon the Officers, and therefore no Induſtry is thrown away upon it. But how is it proved that *Paris* was their original Deſtination? From a Letter of Sir *John Stewart*'s to the Dutcheſs of *Douglas* in 1758, at the Diſtance of twelve or thirteen Years; wherein he tells her Grace, that they meant to go to *France*; compared with two Letters they have taken the Trouble of bringing into Proceſs from Lady *Jane* to Mrs. *Carſe*, written from the *Hague*, *October* 1746, and from *Utrecht*, *February* 1747. In the Firſt of which ſhe mentions her Application to Mr. *Trevor* for a Paſs to *Bourbon* (a Town or Village in *Champagne-Proper*, famous for its Waters, which ſhe propoſed to drink) far enough in Diſtance and Route from *Paris*. But it might have been expected, that the Eagerneſs which muſt have belonged to ſuch a View, would have been indefatigable in procuring a Paſs, which certainly might have been had by ſuch Inſtances as People embarked in ſuch a Project would have made. But the Letters referred to by the Purſuers will beſt explain that: "Though I am ſomewhat mortified (ſays Lady *Jane*) to find unexpected Accidents ariſe to prevent my little Scheme for Health taking place, yet my Vanity is ſo much gratified in conſidering that the trifling Movements of Ladies are believed by two great and wiſe Courts to be of ſo extraordinary Import, that I believe my Health will be better eſtabliſhed by ſo flattering an Idea, than by any other Medicine, or the Uſe of the fineſt Waters in the World, my Illneſs being moſtly Lowneſs of Spirits: What heightens them muſt prove an effectual Cure." P. P. 32. B.

In the ſecond Letter ſhe explains, that even her Purpoſe of going to *Bourbon* was but ſecondary, on Account of the Difficulty and Danger from Robbery in the Roads to *Aix-la-Chapelle*, as "Finding many more Difficulties than I could have imagined in obtaining ſo trifling a Thing as Liberty to paſs for medicinal Waters, even though they happen to be on the *French* ſide, I have laid aſide my Deſign of going there, though Mr. *Keith*, the laſt Time I ſaw him, aſſured me, that if I inſiſted upon it, I ſhould get a Paſs to go wherever I pleaſed."—Their own Evidence ſtated is an Anſwer to their Argument upon it, when only referred to.—This String of Motives, no one of which can be ſeriouſly aſcribed to her, is cloſed with the uſual Argument: What ſignifies the Want of Motive, if the Fact of the Impoſture is proved? Nothing; but till it is proved, it is rather a ſtrong, additional Reaſon for diſbelieving it. —— 34. VI.

CHAP. II.

Of Lady Jane's *not appearing pregnant.*

THE Purſuers ſay, that though it be true that a great Variety of Perſons have depoſed that Lady *Jane* had all the Appearance of a Woman in the State of Pregnancy, and ſome of them mark their Belief in a pretty ſtrong Manner, yet this was all affected, or falſe, for that ſhe was ſeen in all Manner of Company, without any ſuch Appearance. At firſt Sight it ſeems extraordinary, that in counterfeiting Pregnancy, ſhe ſhould not have endeavoured at as much Conſiſtency as poſſible.—The Proof of this Propoſition is as follows:

Lady *Catharine Wemys*, the foremoſt in this Claſs of Witneſſes, left *Aix* about the 10th of *February* 1748, when Lady *Jane* was four Months gone with Child; and ſays, ſhe took no Thoughts of Lady *Jane's* being with Child, as ſhe did not believe that ſhe was married. —— 42. C.

The next Witneſs is the Counteſs of *Wigton*, her Friend.—She died before the preſent Action; ſhe was ſick at the Service, and was examined in Bed.—She was with her the firſt three Weeks in *May*, and yet took no Obſervation of her Perſon, at leaſt none occurred to her Memory to mention in that Condition; and yet Mrs. *Hewit* had told her ſhe was with Child, which proves four Things, 1. That Lady *Jane* had then no Appearance of Pregnancy. 2. That it was a lying Trick in Mrs. *Hewit* to tell Lady *Wigton* ſo. 3. Mrs. *Hewit* exaggerates in ſaying all the Ladies ſhe mentions took Notice of her Pregnancy, when it is plain Lady *Wigton* did not. 4. She alſo exaggerates in the Deſcription of her Bulk before ſhe left *Aix*. Serv. p. 27. A. —— 11. C.

And yet it appears in the ſame Depoſition, that Lady *Wigton* believed her to be pregnant; and that all the Reſt of her Acquaintance thought the ſame (which could not well have happened before her Marriage was publiſhed without ſome ſtriking Signs)—That ſhe converſed with Lady *Jane* on the Subject: And it appears from Miſs *Primroſe* and Mrs. *Grieg*'s Evidence, that ſhe expreſſed Fears for her on the Journey, on Account of her Condition; and from Baron *Mac Elligot*'s, that ſhe made him remark the Change in her Perſon, and told him of the Marriage and Pregnancy, and —— P. 27. A. D. P. 358 B. Serv. 16. D. D. P. 349. E.

D. P. 375. c. and frequently talked about it; and from Mr. *Gordon*'s, that Lady *Wigton* converſed with him about Lady *Jane*'s Pregnancy, and deſcribed it: And it appears from almoſt all the Witneſſes, that it was generally known, and many Times the Subject of Converſation; and that in four Months after, Lady *Wigton* ſtood Godmother to the Child, which makes her an Accomplice, if ſhe did not think her with Child, after ſtating the Fact this needs no further Comment.

— 380. z. The next Witneſs is Mr. *Fullerton* of *Dudwick*, aged Eighty-ſix.—He was at *Aix* a Week in *May*.—He ſaw her three or four Times in a Crowd of Company: It did not enter into his Head to imagine ſhe was with Child, much leſs to talk of ſuch a Subject, more proper for Women.—He thought "ſhe looked very well, but fuller, that is, more jolly or plump."—This Negative would have been rather of more Conſequence, if he had omitted the Fullneſs.

— 362. d. Mr. *Græme* ſaw Lady *Jane* at *Leige*, and either did not mind her then, or did not remember at his Examination to have ſeen her with Child.—He ſaw her at Mr. *Hepburn*'s; but not having regarded her with that View, did not perceive ſhe was pregnant; and yet this was the Place where every Body elſe thought her Bigneſs ſo remarkable, that the Purſuers are forced in other Parts of their Arguments to revile her for her Affectation to ſhew herſelf.

P. P. 992. c. Mad. *Lampſon*, the Landlady of the *Black Eagle*, does not remember her Perſon.

— 897. a. Mr. *Guenet*, who travelled from *Charleville* to *Rheims* with them in the Coach, and ſaw her in her long Mantle, which covered her to the Heels, and did not know of her Marriage, alſo overlooked her being with Child.

D. P. 363. General *Maclean*, at *Rheims*, does not remember to have obſerved Lady *Jane* with Child; but he refers that to the Diſtance of Time and the Dreſs which ſhe wore; and he does remember that he and *Mackenzie* lifted her up into the Coach with both their Hands.

— 65. c. Mr. *Andrieux*, a Boy then of Nineteen, does not remember to have obſerved the Pregnancy.

But it is ſomewhat extraordinary that they ſtill continue to place Mad. *Andrieux* among thoſe who did not obſerve it. It is no Wonder that in their *French* Libels they inſiſt on ſuch Falſehoods: It was the uſual Stile of thoſe Writings; but it is ſurprizing that they aſſerted it in their Condeſcendence to the Court of Seſſion, and have argued upon it ſince; for it appears that Lady *Jane*, applied to Mad. *Andrieux* to aſſiſt her in getting Child-bed Linen: Now it muſt have been inconceivable Folly to have done ſo without even the Appearance of Pregnancy; but Mad. *Andrieux* is dead, and they go upon the Depoſition of the Son, and upon that Part of it where he relates the above-mentioned Application about the Child-bed Linen; and adds, that his Mother ſaid, in Reference to Lady *Jane's* Age, "This is ſingular and extraordinary." Upon which they infer, in direct Contradiction to the Witneſſes own Explanation, that ſhe did not obſerve her to be with Child. This Lady was afterwards Godmother to Mr. *Douglas*, which makes it impoſſible to believe ſhe had any Reaſon to doubt from Lady *Jane's* Appearance, whether ſhe had been within a Fortnight of lying-in.

Plaintte 20 May, Obſervat. 1763. 4. 7.

D. P. 65. r.

Serv. 68. a.

P. P. 902. b. The next Witneſs who did not obſerve her to be with Child was Mad. *Hibert*, at *Rheims*. It is not very material whether ſhe actually remembered making ſuch Obſervations or not; and it is certainly poſſible ſhe might not: She had few or no Opportunities of ſeeing Lady *Jane*:

D. P. 52. c. She thinks nobody ate with them, though it is admitted that *Mackenzie* and *Maclean* did frequently: She thinks alſo, that ſhe did not know they were going to *Paris*, though they ſet out in the Stage from her Houſe; and there is great Room to think that her Pique againſt them for leaving her Houſe has been uſed to force her Evidence ſomewhat

— 47. r. out of the Truth. It is certain her Brother talked to her about Lady *Jane's* being with Child, and that earlier than he now remembers to have made the Obſervation himſelf. In ſhort, ſoon after ſhe came, and before he was ſo intimate with her as he afterwards was, the Stile of it runs ſo: "Do you know whom you let your Houſe to? I perceive ſomething." This was a Manner of talking which he muſt have uſed before he became acquainted with Lady *Jane*. This muſt have led her to take ſome Notice, and it was impoſſible to do that without perceiving it in ſome Degree or other, though Lady *Jane* rather ſtrove to conceal it. What proves this to have been the real Caſe is, that it appears from Mr. *Stuart's* Caſe in *November* 1762, that ſhe told him Mad. *Stewart* had all the Air of a Perſon with Child, as far as ſhe could judge from her Mien; but that ſhe wore a round Hoop, which hindered judging exactly of her Condition; nor did ſhe ſee her Breaſts, which were covered by a Handkerchief; but ſhe thought her only a few Months gone.

At this Time it was not dreamt that Mad. *Hibert* could be brought to deny the Pregnancy totally; for on the 10th of *December* following, in another Caſe, Mr. *Stuart* ſays, "She feigned, "it is true, a Pregnancy, during her ſtay at *Rheims*; but thoſe who ſaw her did not think her "far enough advanced to be delivered in a few Days." And the Council, in ſumming up the Evidence laid before them, ſays, there was at *Rheims* the Counterfeit of Pregnancy; but it will be proved, they ſay, that it was not advanced enough to indicate the approaching Delivery.

And

And the *Plainte* of *December* 17, ſtates that ſhe feigned a Pregnancy at *Rheims*, and ſo on in the Words of the Caſe; and it was not till the twentieth of *May*, 1763, that they altered their Stile ſo much as to aver that there was no Appearance of Pregnancy at *Rheims*. At what Time, or how they prevailed with Mad. *Hibert*, to alter her Stile, does not appear.

Mad. *Prevoteau*, the younger Siſter of this ſame Mad. *Hibert*, then about Twenty-two, does not remember whether ſhe obſerved her big with Child or not; but ſhe does remember the Maids making Child-bed Linen, which is enough to confute the Idea that ſhe ſhewed no Signs of Pregnancy at *Rheims*. P. P. 899. E.

Mad. *Sautrez* ſays, that ſhe was recommended by Mad. *Hibert* to work for Lady *Jane*, and took two Gowns to refit after the *French* Faſhion, on which Occaſion ſhe meaſured her on the *Tueſday*, and tried the Gowns on the *Friday*, and at neither of theſe Times did ſhe obſerve her Pregnancy. That ſhe was recommended to Lady *Jane* by the *Hiberts* is atteſted by them and by herſelf and Siſter: That Lady *Jane* had a Gown widened is proved by *Iſabel Walker*; but that the two Gowns were altered to the *French* cut before they went to *Paris*, is rather doubtful; not only becauſe Mrs. *Hewit* remembers nothing of ſuch a Paſſage, and *Iſabel Walker*, who does remember the Gowns being widened, has no Recollection of this new faſhioning them; and Mad. *Sautrez*'s Book, in which the reſt of the Work done for Lady *Jane* is ſet down, contains no Article of Work before ſetting out for *Paris*: Nor is it eaſy to imagine, that in preparing for ſuch a Journey, they ſhould want their Cloaths to be altered at *Rheims*. But if it be true, it proves that Lady *Jane*'s Figure muſt not only have the external Appearance of Bulk under her Mantle, but bear the cloſeſt Inſpection: For, on the very Point of going to *Paris* for a Child to be brought back to *Rheims*, ſhe, who had either naturally, or with extraordinary Induſtry, counterfeited remarkable Bigneſs for ſo many Months, would not on ſo ſlight an Account, have allowed a *Rheims* Woman ſuch Opportunities of obſerving. It was urged as a Mark of fraudulent Purpoſe at *Aix*, that ſhe did not ſee the Mantua-maker when ſhe was not near ſo far gone; and here upon the ſuppoſed Criſis of compleating her Scheme, ſhe lays aſide all that Caution at once. If one Sort of Conduct be a Proof of Fraud, ſhall not the Reverſe be a Proof of its oppoſite Innocence? Mad. *Sautrez* however, who with a Slip of Paper meaſured her behind from the Shoulder to the Haunch, and alſo acroſs her Back, and who was preſent when ſhe put on her Gown, did not note her Bulk, nor the contrary; for though ſhe wondered ſhe had not upon ſeeing the Children, ſhe had then recently no ſuch Idea of her Perſon as excluded the Probability of ſuch a Birth. But ſhe had ſo little the Appearances of Pregnancy that ſhe lived retired at *Rheims*, though Sir *John* got acquainted with the principal People of the Place; and this is aſſerted on the ſingle Teſtimony of Mr. *Maillifer*, who has a Memory much like Sir *John*'s own. He confounded their Manner of living after their Return with the firſt three Weeks; for nobody has been found at *Rheims* to whom he was ſo good as to introduce him, except that Mad. *Maillifer* remembers his being brought to her once or twice. This Gentleman once gave much better Evidence for the Purſuers, that Sir *John* had told him he was going to *Villers Cotteret* without his Wife, and they thought that a ſtrong Proof of their favourite Imputation, Myſtery, and Concealment, till they found his Letter, which contradicted him, and then they were aſhamed of it. —— 908. C. E. D. P. 606. E.

Mr. *Macnamara* is cited to prove that ſhe did not appear with Child, becauſe though he does not remember to have diſtinguiſhed her Belly under the Hoop ſhe wore, he thought her with Child from her Look and her Indiſpoſition. P. P. 5. I.

That ſhe did not appear pregnant to thoſe who went with her in the Stage-Coach from *Rheims* to *Paris*, was an Article as much inſiſted on, as if one or two Perſons who never ſaw her before, or expected to ſee her again, could, by their Memory of ſeventeen Years ſtanding, form a deciſive Negative. One would think, to hear them beat this Argument, that a Woman with Child was an Object in *France* enough to raiſe an Aſtoniſhment never to be forgot. Monitor, p. 3. Condeſc. Art. 13. Paintc. o Ma.

She was dreſt, as ſhe uſually was on Journeys, in a long ſcarlet Cloak, which covered her from Head to Foot: Her Shape, therefore, was not open to any Obſervation. They did not talk of it, ſays the *Plainte* of 20th *May*, and therefore it did not draw their Attention. When they came to the Inns, they immediately retired to an Apartment of their own, which moſt People would call Attention to Lady *Jane*'s Condition: The Purſuers call it Myſtery and Concealment, *viz.* The ſame Kind of Concealment (though not ſo ſtrong a Caſe) as going to Bed. If they had been impertinent enough to talk of it all the Way, and induſtrious to bring her into every publick Room, and tend her as a ſick Perſon, it would have been called Oſtentation; for want of which, the only Opportunity the Company had of being aſtoniſhed at the Sight of a Woman with Child was in the Coach, and in going into and out of it.

As to the laſt, The *Plainte* ſays, nobody was ſeen at *Rheims* to lift her into the Coach. The Witneſſes not applying themſelves to *Rheims* in particular, did not obſerve any peculiar Difficulty ſhe had in getting into or out of the Coach. But it appears that ſhe was lifted into the Coach

D. P. 53. D. by two Gentlemen with both their Hands; and Mr. *Mackenzie* deſcribes very particularly her Heavineſs and Bulk.

In the Dreſs which ſhe wore it was abſolutely impoſſible to obſerve her Shape, and conſequently thoſe who had no particular Reaſon to examine, would be likely to remember little about it: Accordingly the Reſult of their Evidence is, that ſhe might be with Child, but they did not obſerve it.

And that they are right in ſaying ſhe might be with Child, though they did not obſerve it, will appear by the ſlighteſt View which can be taken of their Evidence.

P. P. 919. B. The Witneſs whom they ſet forwardeſt is Mad. *Audry*, the Mother of twenty Children---ſhe is ſo referred to in the Condeſcendence---Mad. *Audry* deſcribes her Face as exactly as if ſhe
—— 912. C. had remembered it herſelf; and ſays, there was but one foreign Woman in the Coach, and ſhe could ſpeak no *French*---The *Plainte* ſays, ſhe ſpoke little or none---Mad. *Vatry* ſays, That ſhe talked a great deal. She overlooked Mad. *Hewit*, though much taller and bigger than Lady *Jane*. The Purſuers ſay, this was owing to her ſitting at the other End of the Coach; by the ſame Means alſo ſhe miſtook the Circumſtance of the Lady's ſpeaking *French*. Sir *John*, who ſat in the middle, repeated what ſhe ſaid, and the Witneſs who did not hear her, took it for interpreting; but that the foreign Man told her, the foreign Lady did not underſtand *French*; that ſhe had never
—— 919. E. been in *France* before, and ſtared at the Number of Coaches, when ſhe came near *Paris*; and to prevent Miſtakes, ſhe was the only Woman. It may be doubted whether a Word of this be taken from her own Memory---She was a *Tournelle* Witneſs, and as their Uſage was to all their Witneſſes, ſhe was provided with a Preſent of all their Libels: After which her Deſcription goes to ſomething between Lady *Jane* and Mrs. *Hewit*, that is to ſay, between two Perſons the moſt unlike of the human Species.

—— 915. Mad. *Vatry* gives no Deſcription of Lady *Jane*'s Perſon; but ſays, Mrs. *Hewit* was tall, and both wore long Cloaks. *Deſpommiers*, her Maid, cannot think which was biggeſt of the two. Now Mrs. *Hewit*, who was very large and fat, under a Cloak muſt have Bulk to hold half a Dozen Children.

Godefroi and his Wife, at *Paris*, did not obſerve her Bulk, which is proved by this, that nei-
—— 952. E. ther of them remember the Perſon of any of the three: Nor is it poſſible, ſays Mad. *Godefroi*, after ſuch a Length of Time to remember their Gueſts, who uſually come but for a Day or two, till they get private Lodgings.

This is the whole Proof which the Purſuers have brought of Lady *Jane*'s not having the Appearance of Pregnancy during the Months preceding the 10th of *July*.—Some of the Witneſſes referred to by them, ſuch as Lady *Wigton*, did know and obſerve her with Child: Thoſe who did not were perfect Strangers to her natural Shape; and all they ſay is, that they did not obſerve it; and add, becauſe they paid no Attention to her; and that ſhe might have been with Child, though they did not obſerve it.

CHAP. III.

Proof of Lady Jane's *Pregnancy.*

THE Evidence of Lady *Jane*'s actual Pregnancy ſtands thus:——Lady *Jane* died in 1753, and could not be examined on this Subject; but it has been ſeen that all her Demeanour beſpoke the Truth of it.

The ſame Obſervation occurs to Sir *John Stewart*, who was examined before his Death, only *ex Parte*, by the Purſuers; and no Queſtions were put to him by them, with reſpect to her Pregnancy.
Dec. 16. 2. In Anſwer to one general Queſtion by the Court, he only ſays, "That when he carried Lady "*Jane* from *Rheims* to *Paris*, he is confident that ſhe was with Child, by her having the common "Symptoms which attend Women in that Situation."

Mrs. *Hewit* relates upon her general Examination on the Service, That Lady *Jane* fell with Child
Serv. p. 13. C. in the End of the Year 1747; and that her Pregnancy became remarkable and apparent about the
P. P. 251. A. C. ſixth Month: That Mrs. *Hepburn* of *Keith*, Mad. *Obin*, Lady *Wigton*, and Miſs *Primroſe*, all converſed with her about Lady *Jane*, and took Notice of her Pregnancy: That Lady *Jane* was about eight Months gone with Child when ſhe left *Aix-la-Chapelle*, and at this Time both her Belly and Breaſts, and particularly her Breaſts, were ſo remarkably big, that ſhe was thought to be with Twins, and that Lady *Jane* was naturally ſlender, and had ſcarce any Breaſts at all: That ſhe was ſo heavy when ſhe left *Rheims* that ſhe could hardly ſtir, on which Account Lieutenants *Maclean* and *Mackenzie* lifted her into the Coach. Mrs. *Hewit* likewiſe wrote to Mr. *Colvil* be-
—— 298. fore they left *Aix*, that Lady *Jane* was with Child: And ſome Time after ſhe informed him by a ſecond Letter, that Lady *Jane* was big with Child, and that they were going to remove from thence to ſome Part in *France*; and that Lady *Jane* was ſo big and unwieldy, that they were much concerned about her.

Iſabel

Iſabel Walker, who was Lady *Jane*'s Chambermaid during the whole Time of the Pregnancy, has been frequently examined with reſpect to Lady *Jane*'s Situation, ſays, She obſerved the Suppreſſion of Lady *Jane*'s *Menſes*, and that ſhe was frequently out of Order, and ſometimes throwing up, and mentioned theſe Complaints to Mrs. *Tewis* their then Landlady, conſidering her as a Perſon of Experience; upon which Mrs. *Tewis* told her, ſhe needed not be alarmed about her Lady's Complaints, for that ſhe was with Child: That ſhe ſoon ſaw that it was ſo, for Lady *Jane* had all the Symptoms of a Woman in that Condition, which ſhe had the more Acceſs to know, as ſhe was the Perſon who ſhifted Lady *Jane* in the Morning, laced her Stays or Jumps, helped her to her Morning-Dreſs, undreſſed her, and put her to Bed, and helped her out of Bed in the Morning, and ſaw her, on theſe Occaſions, without any Cloaths: That Lady *Jane* became ſo unwieldy in the ſeventh Month of her Pregnancy, as not to be able to go to Bed without Aſſiſtance, which ſhe gave her; and by Means of a Stool or Box, ſhe ſtepped in and out of Bed: That Lady *Jane* was uncommonly big, and ſhe never ſaw any Woman with Child bigger; and from the Appearance of her Belly and Breaſts, which ſhe had frequent Occaſion to ſee, it was impoſſible for her to have been miſtaken or deceived of Lady *Jane*'s Condition. Lady *Jane* gave over wearing Stays in the ſeventh Month of her Pregnancy; and her Mantua-Maker made her a Bone Waiſt-coat or Jumps, which ſhe wore ever after, but wore no Bed-Gown: That ſhe has had Occaſion frequently to ſee Lady *Jane*'s naked Breaſts and Belly, both before leaving *Aix-la-Chapelle*, and after ſhe came to *Rheims*, and has had her Hands upon Lady *Jane*'s naked Belly (above the Shift) and found her with live Child; which ſhe would depoſe if ſhe was going to ſtep into Eternity, whatever Wretches might ſay to the contrary: That Lady *Jane* was naturally flat breaſted, and very thin; but when with Child, her Breaſts roſe to a great Size. Lady *Jane*, about the Beginning of her Pregnancy, uſed to impute her frequent Complaints and Sickneſſes to the Bile, with which ſhe had been formerly troubled; and, upon *Iſabel Walker*'s finding the Child, or Children, move in her Belly, ſhe told Lady *Jane*, ſhe was now in no Pain about the Bile; for if it was Bile, it was living Bile, as ſhe was conſcious her Ladyſhip was with Child. She never heard Lady *Jane* expreſs any Doubts of her being with Child, after ſhe was with quick Child. That ſhe and *Effy Caw* began to make Cloaths for the Child of which Lady *Jane* was pregnant, before they left *Aix-la-Chapelle*; they bought ſome Edgings, and other Things, at *Liege*, continued to make them when they ſtopped at *Sedan*, and finiſhed them at *Rheims*: That Lady *Jane*, after leaving *Aix*, remained ſome Days at *Liege*, where Mr. and Mrs. *Hepburn* were, with whom Lady *Jane* was daily during her Stay at that Place.. On their Arrival at *Sedan*, their Landlady, who was a married Woman, and had ſeveral Children, obſerved, from Lady *Jane*'s big Belly, and her Face, that ſhe was near her Time. Lady *Jane* was taken ill at *Rhetel*, and put to Bed immediately on her Arrival by Mrs. *Hewit*, *Iſabel Walker*, and *Effy Caw*, who were afraid ſhe would have been delivered at this Place; and *Iſabel Walker* ſat up with her all Night, and conſidered the Fatigue of her Journey, to a Woman in her Situation, as the Cauſe of her Complaints; but having recovered towards Morning, ſhe proceeded to *Rheims*.

Minutes, p. 11. H. Service, p. 18. C. — P. P. 50. E. — Service, p. 189. — Minutes, p. 3. — Min. p. 4. H. — Serv. p. 19. A. — ——— B. — Min. p. 6. D.

Iſabel Walker adds, That one Morning at *Rheims*, after ſhe aſſiſted Lady *Jane* to dreſs, and ſhe being without a Hoop, in her Night-Gown, ſhe obſerved her to be every Way ſo round, and ſo bulky, and to a greater Degree than ſhe had ever ſeen any Woman with her firſt Child, ſhe formed the Conjecture of Twins, which ſhe expreſſed to Mrs. *Hewit*, who deſired her not to frighten her, as ſhe (Mrs. *Hewit*) was frightened enough already.—This Converſation is alluded to in Mrs. *Hewit*'s Letter to *Iſabel Walker*, informing her of Lady *Jane*'s Delivery. When *Iſabel Walker* heard of Lady *Jane*'s lying-in, ſhe was afraid ſhe would be much troubled with her Milk, as her Breaſts were ſo big: That ſhe communicated her Fears to Mrs. *Hewit*; who anſwered her, that Lady *Jane* was much troubled with her Milk, but that the Doctor had given her Plaiſters, which relieved her.

Min. p. 34. C. — Serv. p. 34. C. — D. P. 369. B.

Effy Caw, Lady *Jane*'s other Maid, died before the Service in the Year 1761. She had the ſame Opportunities of knowing Lady *Jane*'s Situation as *Iſabel Walker*. Mrs. *Tewis*, in *November* 1747, when the firſt Symptoms of Pregnancy was diſcovered, informed both Servants, that Lady *Jane* was with Child. After this *Effy* dreſſed Lady *Jane* occaſionally, as well as *Iſabel Walker*: She was in her Apartment when ſhe went to Bed, and before ſhe was dreſſed in the Morning, at *Aix*; put her to Bed at *Rhetel*, when ſhe was taken ill, and had the ſame Opportunity of knowing Lady *Jane*'s Situation with the other. She was diſmiſſed from Lady *Jane*'s Service on her Return to *England*, and piqued on that Account. However, ſhe told Mr. *Peters*, a Bookſeller in *Edinburgh*, who queſtioned her on Account of the Reports which have been mentioned, that Lady *Jane* had all the Symptoms of a Woman with Child, which ſhe had Acceſs to know, by dreſſing and undreſſing her; and that ſhe had no Occaſion to ſay any Thing but the Truth, as ſhe had left Lady *Jane*, and would probably ſee her no more.

—— 485. G. — P. P. 895. I. — D. P. 382. F. G. —— 338. A. B.

She entered, ſome Time after this, into the Service of Mrs. *Ricard Hepburn*, with whom ſhe often talked of Lady *Jane*'s Pregnancy, as a Thing which ſhe made no Doubt of; and of her being

—— 382. A.

ing fully satisfied that the Defender and his Brother were Lady *Jane*'s Children, &c. Mrs. *Hepburn* being with Child at that Time, and complaining of the Straitness of her Gown, *Effy* advised
Service, p. 10. A. her to slit, and lace her Gown, as she had done for Lady *Jane*, when she was with Child, which she accordingly did, and she mentioned several other Particulars, which Mrs. *Ricard Hepburn* had forgot at her Examination.

——p. 10. A. Mrs. *Hepburn* of *Keith*, Mother-in-law to the above Lady, conversed with *Effy* on the same Subject; and heard her declare, that if she was stepping into Eternity, she would swear that Lady *Jane* was with Child. This was said in Reference to the above-mentioned Reports; and, on this Occasion, she wished that her Oath might be taken, and said, that she was the more positive of Lady *Jane*'s being with Child, as she dressed and undressed her at this Time; and Mrs. *Hepburn* had the more Regard to this, as *Effy* seemed to be a little piqued at Lady *Jane* for turning her from her Service.

P. P. 50. G. *Isabel Walker* says, That if *Effy*, the other Maid, was alive, she would swear in the same Manner as she had done; for she remembers, that one Day at *Rheims* she told her, that on pinning Lady *Jane*'s Robe, she felt the Child move in Lady *Jane*'s Belly. Lady *Jane*, sensible of it, said, she would put in the Pins herself, and turned red in the Face; upon which *Effy* observed that she could not have been more bashful if she had been with Child of a Bastard.

Mad. *Tewis*, Lady *Jane*'s Landlady, observed the first Symptoms of her Pregnancy, about
D. P. 15. G. the Beginning of *November* 1747, by her frequent Vomitings and other Complaints; and by her particular Food. And about the same Time, at the Desire of Lady *Jane* and Sir *John*, she caused a second Bed to be put up in Lady *Jane*'s Bed-Room: and says, that the Chamber-Maids made the same Observations, and that after this, from one Month to another, she observed the visible
—— 29. F. Increase of the Pregnancy. She told Sir *George Colquhoun*, that during the Course of the Pregnancy, she had prescribed to Lady *Jane* such Things as she had found useful to herself, when in that Condition, and had caused her Mantua-Maker to widen Lady *Jane*'s Petticoats, in the Course of her Pregnancy: and that she had put her Hand upon Lady *Jane*'s Belly, and found her with live Child; and said, that she safely could, and was resolved she would, give her Oath, that if ever she or any other Woman was with Child, Lady *Jane* was with Child, when at *Aix-la-Chapelle*.
—— 33. G. Colonel *Douglas*, who was carried to Mad. *Tewis*, in order to hear her repeat what she knew about Lady *Jane*'s Situation, has confirmed the Circumstances mentioned by Sir *George*: And this Lady, in her notorial Declaration, has attested, that she went unexpectedly into Lady *Jane*'s Apartment the Morning she left *Aix la-Chapelle*, and found her in her Shift, rising out of Bed, and observed her Pregnancy so remarkable, that she was surprized at it.

—— 9. F. G. Mad. *Therese Tewis*, a Nun, Daughter of the above Mad. *Tewis*, mentions the great Intimacy which subsisted betwixt Lady *Jane* and her Mother, says, that her Mother never doubted of the Pregnancy or Delivery of Lady *Jane*, because she was *well informed*, and knew it to be real.

—— 495. C. Mr. *Joseph Tewis*, Brother to the above Lady, says, he never heard his Mother say that she had the least Doubt of the Pregnancy or Delivery of Lady *Jane*; but, on the contrary, always said to him, that she had no Doubt of the Pregnancy or Delivery.

—— 1006. In a Letter which Mrs. *Herbert*, her Daughter, in *London*, wrote to the Duchess of *Douglas*, she says, that Mad. *Tewis*, her Mother, wrote to her that she was as certain of Lady *Jane*'s being with quick Child, as any Midwife at *Aix*, or as the Midwife who delivered Lady *Jane*, could be.

—— 357. G. Miss *Primrose*, who went to *Aix-la-Chapelle* with Lady *Wigton* in *May* 1748, heard Lady *Jane*'s Pregnancy and Delivery frequently spoke of by Mad. *Tewis*, and never heard her or any other Person ever express the least Doubt of it.

Mad. *la Comtesse de Bassivitz*, with whom Lady *Jane* was very much connected in the Year 1747, returned to *Aix* in 1750, and had frequent Conversations with Mad. *Tewis* upon the Subject of their common Friend Lady *Jane Douglas*, to whom Mad. *Tewis* said, that the Evidence
Serv. p. 73. she was in Condition to produce in Support of Lady *Jane*'s Pregnancy was more than sufficient to frustrate whatever the blackest Malice of her Enemies could invent to the Prejudice of her dear Twins.

D. P. 1. Lady *Jane* removed from the House of Mad. *Tewis* to that of Mad. *Scholl* on the 5th of *January*, 1748, in order that Mad. *Tewis*'s House might be fitted up for the Reception of Lord *Sandwich*, Plenipotentiary from the Court of *England* to the Congress at *Aix-la-Chapelle*. This Woman was not told at first of Lady *Jane*'s Marriage, but discovered it some Time afterwards. She never saw Lady *Jane* but when dressed in a Robe and Hoop, consequently had no Opportunity of ob-
—— 4. E. serving her Shape; but she remembers that she was remarkably delicate and pale, and that she was extremely careful of herself, from which she suspected that she was with Child. Some Time after the Departure of Lady *Jane* from *Aix-la-Chapelle*, Mad. *Tewis* sent to inform this Mad. *Scholl* that Lady *Jane* was delivered of male Twins, upon which she went to see Mad. *Tewis*, to congratulate her on the News of Lady *Jane*'s Delivery.

Lord

Lord *Crawford*, who lived at *Aix-la-Chapelle* from *October* 1747, till the Middle of *April* 1748, was very intimate with Lady *Jane*, and viſited her often about the Beginning of the Pregnancy. *Iſabel Walker* ſays, that when Lady *Jane* looked extremely ill, and had Fits of vomiting, his Lordſhip told Sir *John* in her Preſence, that he need be under no Uneaſineſs for Lady *Jane*, as ſhe was with Child. D. P. 963. G. Minutes, p. 5. D.

Mrs. *Hewit* ſays, Lord *Crawford* was the firſt Man who obſerved the Pregnancy, from Lady *Jane*'s Looks and Appearance: And upon another Occaſion, when Lady *Jane* complained of a Tooth-ach, he obſerved to her, that the Tooth-ach ſhe complained of would give Pleaſure to all her Friends---And in a Letter which he wrote to the Duke of *Douglas* on the 20th of *April* 1748, he requeſted the Duke to be reconciled to the Marriage, as there was ſuch viſible Hopes of its being attended with Conſequences ſo much wiſhed for by every Perſon who was fond of ſeeing the Name of *Douglas* multiply; and when at the Army he told Lord *Lindores* of his being certain that Lady *Jane* was with Child. P. P. 251. B. D. P. 964. C. —— 371. G.

Lady *Jane*, when formerly at *Aix-la Chapelle*, had contracted an Intimacy with Mad. *Martel*, Prioreſs of the Convent of St. *Ann* of that Place, and on this Occaſion went frequently there to ſee her old Friend; and on theſe Occaſions was ſeen by the Nuns. Mad. *Martel* appears to have been informed of Lady *Jane's* Marriage, though the other Nuns were not. Among theſe Nuns however Lady *Jane's* Pregnancy was immediaely obſerved; it ſtruck them the more, on Accouut of the Scandal, as they thought her unmarried. They ſpoke of it to each other frequently, and after conſidering her Perſon attentively, they were ſo much convinced of it, that they mentioned it to their Confeſſor, as a Scandal which their Conſciences obliged them to reveal. Some Time after this Mad. *Martel* obſerving their Suſpicions, told them, they ought to have no bad Ideas againſt Lady *Jane* on Account of what they ſaw, for ſhe was married to Mr. *Stewart*. Mad *Meſback* expreſſes her Ideas of Lady *Jane* in this Manner, That ſhe immediately ſuſpected that Lady *Jane* was with Child, by the Bulk of her Body, by her Carriage, and by her Viſage, *Tire et l'Air defait*. —— 480. G. —— 480. E. —— 483. C. —— 493. E.

Mad. *Packenius* ſays, She obſerved her to be with Child by her Appearance, and becauſe ſhe was thicker than ordinary, like a Woman with Child. And Mad. *Hagens*, the preſent Prioreſs, ſays, She appeared to her to be with Child; and that the other Nuns ſpoke to each other of Lady *Jane* as a Woman with Child. And Mad. *Martel* told the Nuns, after Lady *Jane's* Departure from *Aix*, that ſhe had learned by a Letter, that ſhe was delivered of Twins. —— 13. A. —— 23. C.

Baron *Mac Elligot* became acquainted with Lady *Jane* about the End of the Year 1747, and ſoon after contracted a great Friendſhip for, and Intimacy with her and Sir *John*: He was often with them at Breakfaſt and Dinner, and ſometimes walked out with Lady *Jane*. On theſe Occaſions he obſerved that ſhe had Qualms, and was often obliged to quit the Table, and go into the next Room, where he more than once overheard her reaching and puking, from which he ſuſpected that ſhe was with Child. Lady *Jane* obſerving this, told him, that ſhe was married to Sir *John Stewart*, and that ſhe believed herſelf with Child: But requeſted him to keep it a Secret, for fear of diſobliging her Brother, who might withdraw her Annuity from her; and that before he was told of the Marriage, the Appearance of Pregnancy were ſo clear, that it never came into his Head that they were affected or ſhammed. After Lady *Jane's* Departure from *Aix*, Sir *John* correſponded with Baron *Mac Elligot* conſtantly, and when Lady *Jane* was delivered at *Paris*, he requeſted him and Lady *Wigton* to go there to be Godfather and Godmother to her Children. —— 349. —— 350. E.

About the 20th of *March*, Mr. and Mrs. *Hepburn*, of *Keith*, went to *Aix-la-Chapelle*, on a Viſit to Lady *Jane*, and remained with her there ten Days.—Mrs. *Hepburn* immediately obſerved a very great Difference betwixt her Appearance then, and when ſhe had ſeen her at the *Hague*—That her Face was *very thin*, her *Belly* or *Waiſt* was *very thick*, her *Cheeks thin*, and her *Eyes large*, from all which ſhe had not the leaſt Doubt of her being with Child, and told her Huſband ſo that Night.—She alſo mentioned it to Mrs. *Hewit* next Morning, and told her that ſhe took it ill ſhe had never acquainted her of it; but that Mrs. *Hewit* told her ſhe wanted to ſurprize her, and try if ſhe would find it out herſelf.—Both Mrs. *Hewit* and *Iſabel Walker* remember this Converſation with Mrs. *Hepburn*. Serv. p. 9. A. —— p. 10. G. —— p. 18. B.

Mrs. *Hepburn* ſaw Lady *Jane* afterwards at *Liege*, whom ſhe deſcribes juſt like a *Clue*, with a Capuchin about her, and that ſhe had no Affectation to diſcover her being with Child.—That one Morning, at this Time, ſhe ſaw Lady *Jane* ſitting on her Bedſide without her Gown, and her Waiſtcoat laid about her: Her Breaſts were quite expoſed, and that it was impoſſible for any Perſon who ſaw her in that Situation, to doubt of her being with Child; and that Lady *Jane's* Pregnancy was the more remarkable, that when ſhe was at the *Hague* in 1746, ſhe was a thin and ſlender Woman, and ſcarce appeared to have any Breaſts at all. This Lady was one Day in a Coach with Lady *Jane*, Sir *John* and Mrs. *Hewit*, when a Beggar, whoſe Noſe was flat in his Face, —— 9. C. P. P. 339. E.

Face, appeared at the Coach-Door, and requeſted Charity; whereupon Sir *John* ruſhed out of the Coach, and turned away the Man, leaſt Lady *Jane* ſhould ſee him in her then Situation.

Serv. 8. A. Mr. *Hepburn* on ſeeing Lady *Jane* at *Aix*, immediately obſerved that ſhe was thinner in the Face, and not ſo well as when he had ſeen her at the *Hague*, and took Notice of this Change to his Wife; who ſaid to him, *Don't you obſerve ſhe is with Child?* He looked more narrowly at her next Day, and ſaw that it was ſo.—And when he afterwards ſaw her at *Liege*, ſhe appeared further gone with Child than when he ſaw her at *Aix*, and that ſhe endeavoured to conceal her P. P. 337. E. big Belly by a looſe Dreſs which ſhe wore.—His Wife told him at Night of Sir *John*'s Uneaſineſs for Fear of Lady *Jane*'s ſeeing the Beggar with the deformed Face; and he underſtood that Sir *John* had turned him away on Account of Lady *Jane*'s being with Child.

Mad. *Negrette*, then Wife of Baron *D'Obin*, *Conſellier d'Etat de l'Impératrice Reine et du Conſeil ſupreme de Païs-Bas*, was very intimate with Lady *Jane* in 1747; but ſhe lived at *Hodimont* during D. P. 497. B. the *Winter* 1747-8, and returned to *Aix-la-Chapelle* about the End of *March* 1748, and immediately went to ſee her Friend Lady *Jane*.---On this Occaſion ſhe obſerved, that Lady *Jane* was very much changed, and that her Face was very thin and long; but as ſhe did not know that ſhe was married, ſhe imagined that this Change had been owing to her having been ill. Mrs. *Hewit* and ſhe having gone into a different Room, Mrs. *Hewit* aſked her how ſhe found my Lady; to which ſhe anſwered, ſhe had found her changed. On this Mrs. *Hewit* told her, that Lady *Jane* was married to Colonel *Stewart*, and with Child; and that it was Time for them to leave *Aix*, as the Pregnancy, which was well advanced, would diſcover the Marriage. Mad. *Obin* (now *Nigrette*) after this ſaw Lady *Jane* often during her Stay at *Aix*, and obſerved that ſhe had more and more the Appearance of a Woman with Child, having a big Belly. As Lady *Jane* at this Time paſſed for an unmarried Woman, ſhe was obliged to do all ſhe could to conceal her Preg- —— 497. E. nancy, and for that Purpoſe borrowed a long Cloak from Mad. *Obin* in order to conceal her big Belly, when about to make a Viſit to the Counteſs St. *Severin*, Wife of the Miniſter from the Court of *France* to the Congreſs at *Aix*; and Mrs. *Hewit* told Mad. *Obin*, that without the Cloak ſhe would have an indecent Appearance, as ſhe paſſed for an unmarried Woman.---Lady —— 498. B. *Jane* and this Lady one Day had a Converſation on the Subject of her, Mad. *Obin*'s, being with Child, which ſhe denied, ſaying ſhe was too old; upon which Lady *Jane* obſerved, that ſhe was not too old, and bid her look *at her*, by which ſhe underſtood that Lady *Jane* meant to ſay that ſhe was with Child, and older than her.

About the Beginning of *April* 1748, Mad. *Scholl* was offered a much higher Price for her —— 477. F. Lodgings than Lady *Jane* paid.---She offered her the Preference, but ſhe refuſed it, and therefore was obliged to requeſt her Friend Mad. *Tewis* to take Apartments for her in the Houſe of a very —— 475. low Woman, one Mad. *Gilliſen*.---Theſe Apartments were mean, and the Landlady was never once admitted into Lady *Jane*'s Apartment; and ſhe was not informed of the Marriage, or of Lady *Jane*'s being with Child.---She was ſome Time afterwards told of the Marriage, and that Lady *Jane* was with Child, and that her Cloaths were repeatedly widened on this Account.---She ſaw Lady *Jane* once after this, and obſerved from her Bulk and Difficulty of walking in coming down the Stairs, that ſhe was with Child.---She never ſaw her but this ſingle Time.

On the 5th of *May* 1748, Lady *Wigton*, Mr. *Fullerton* of *Dudwick*, Mrs. *Grieg*, and Miſs *Primroſe*, arrived at *Aix-la-Chapelle*.---Mr. *Fullerton* (as formerly obſerved) ſtaid but a few Days, and as he never ſaw Lady *Jane*, but in a Crowd of Company, did not particularly remark her Pregnancy.

That Lady *Wigton* too, as has been formerly ſtated, obſerved the Pregnancy with her own Eyes, —— 352. D. as well as being told it by Mrs. *Hewit*, is very clearly proved by the Teſtimony of Baron *Mac El-* —— 375. C. *ligot*, to whom ſhe mentioned it particularly. And of Mr. *Gordon* of *Cowbardie*, who arrived at *Aix* ſoon after Lady *Jane* had left it, and ſays, that Lady *Wigton* had told him of Lady *Jane*'s being with Child; and deſcribed her Appearances to him ſo naturally, that he had not the leaſt Doubt of her being ſo. And of Miſs *Primroſe* and Mrs. *Grieg*, to whom ſhe expreſſed her Apprehenſions of Lady *Jane*, on Account of her Journey.

Miſs *Primroſe*, who attended Lady *Jane*, was then only fifteen Years of Age; but as ſhe had —— 357. heard, on her Arrival at *Aix*, that Lady *Jane* was with Child, ſhe obſerved her the more curiouſly one Day, upon being carried into Lady *Jane*'s Room by one of the Chambermaids, when ſhe was dreſſing, and ſays, That ſhe did appear to her to be with Child, from her Bulk and Appearance; and that when ſhe ſaw her afterwards at *Rheims*, after her Delivery, ſhe obſerved the greateſt poſſible Difference upon her, inſomuch that ſhe ſcarcely knew her to be the ſame Woman.

Serv. p. 16. C. Mrs. *Grieg*, who was further advanced in Life than Miſs *Primroſe*, and whoſe Memory was entire at the Time of her Examination, both at the Service and ſince, ſays, That when ſhe ſaw P. P. 343. D. Lady *Jane* at *Aix* ſhe had all the Appearance of a Woman with Child; and particularly, that her

Face

Face had that Appearance; insomuch that no Person, but one blind, could have doubted of her being with Child; and was perfectly convinced and satisfied that she was so: And that, when she heard of Lady *Jane*'s intended Journey to *Rheims*, she was afraid she would not make out the Journey, and communicated her Fears to Mrs. *Hewit* and *Isabel Walker*; and when she saw her afterwards at *Rheims*, after the Delivery, she had the Appearance she expected, after hearing that she was delivered of Twins. P. P. 343. D.

Mad. *Tewis*, the Nun-Daughter of Mad. *Tewis*, with whom Lady *Jane* lodged for some Time, was confined to her Convent, and never went abroad: But Lady *Jane* visited her frequently at her Convent; and this Lady says, That Lady *Jane* had quite the Appearance of a Woman with Child; and that, when she came to take Leave of her, she had the Appearance of a Woman ready to be brought to Bed. D. P. 478. E.

Lady *Jane*, before her Departure from *Aix-la-Chapelle*, informed Mr. *Douglas* of *Edrington* of her Pregnancy, as she had before done of her Marriage. It has been already observed, that Mrs. *Hewit* had communicated it to Mr. *Colville*, who also knew of the Marriage at the Time he conducted Lady *Jane* to *Huntington* in the Year 1746. P. P. 372. G.

Lady *Jane* had but one Man Servant at *Aix-la-Chapelle*, who she was very desirous to have carried with her; but as he was a *French* Deserter, he could not go. He too informed his Wife, after Lady *Jane*'s Departure, that she was with Child, and expressed much Satisfaction when he heard of her Delivery. D. P. 489. F.

Lady *Jane* set out from *Aix-la-Chapelle* on the 21st of *May*, and arrived at *Liege* on the same Evening. One *Lambinon*, who had been her Servant in *Holland* in 1746, and at *Aix* in 1747, was now retired to *Liege*, and married there. Mrs. *Hewit*, and the Chambermaids, immediately paid a Visit to their old Acquaintance, and informed him of Lady *Jane*'s Arrival at *Liege*, and that she was with Child. *Lambinon* and his Wife went to pay their Respects to his Mistress. He immediately observed that she was very big with Child, which he judged by the Bulk of her Belly. He afterwards went with Mrs. *Hewit*, and with the Maids, to some Shops, to assist them in buying Muslin and Lace, which they told him was to make Child's Cloaths of. This Circumstance is particularly remembered by *Isabel Walker*. Mad. *Lambinon* also observed her to be very big with Child, and that her Pregnancy appeared extremely. Her Husband told her of the buying Muslin and Lace for the Child's Cloaths. — 505. D. — 505. D. — 508. A.

Mr. *Byres* of *Tonley*, a *Scotch* Gentleman, became acquainted with Lady *Jane* at the *Hague* in 1746, and saw her frequently during her Stay at *Liege*: He observed that she had the Appearance of a Woman big with Child, and that all his and her Acquaintance were of the same Opinion; and that he was as much satisfied of her being with Child, and heavy with Child, as ever he was with any other Woman being so, and she made no Ostentation of her Pregnancy; but the contrary. — 387. A.

Chevalier *Douglas*, who had been acquainted with Sir *John Stewart* and Lady *Jane* in *Scotland* in 1746, accidentally met Sir *John* at *Liege*, who told him that he was married to his Cousin Lady *Jane Douglas*, and that she was in *Liege*, and insisted that he should go and see her, which he did: And says, that on this Occasion her Appearances of Pregnancy were very visible both by the Features of her Face and the Bulk of her Body; and that he never saw a Woman whose Appearances were more apparent: That when he saw her in *Scotland* in 1745, she was very thin, and as she was little, her Pregnancy appeared to him the more remarkable. This Gentleman afterwards met with Lady *Jane* and Sir *John* at *Dunkirk* in the End of the Year 1749; and observed that Lady *Jane* had then an Appearance quite different from what she had at *Liege*, and that she was even thinner than when he had seen her at *Edinburgh*. — 500. F. — 501. A.

They left *Liege* on the 25th of *May*, and arrived at *Sedan* on the 27th. They remained here nine Days. The Reason of so long a Stay here was, that the Stage-Coach for *Rheims* went only once a Week, and on the *Wednesday*, and as they were not ready to proceed on *Wednesday* the 29th, they were obliged to remain till *Wednesday* thereafter, 5th of *June*. The People in whose House Lady *Jane* staid at *Sedan* have not been discovered; the Observation which the Woman in whose House they lodged made upon Lady *Jane*'s Person, is reported by *Isabel Walker*. P. P. 890. C.

On the 5th of *June* they left *Sedan* in the Stage-Coach; they were joined by *Guenet* at *Charleville*, whose Deposition has been already stated; and next Night they slept at *Rhetell*: *Guenet* confirms the Account given by *Isabel Walker* of Lady *Jane*'s Indisposition at this Place, and that she was immediately put to Bed by her *Chambermaids*, and by Mrs *Hewit*: And *Isabel Walker* says, she sat by her all Night. She recovered a little in the Morning, and proceeded on her Journey, and arrived at *Rheims* the 7th of *June*. — 895. H. Minutes, p. 6. E.

On Lady *Jane*'s Arrival at *Rheims*, and for some Time after, it appears, that she intended to have been delivered at this Place; she was not in a Condition to go much abroad, or to see many

People in her own Apartments. There were but few of the *Rheims* People who had Occaſion to ſee her, or obſerve her Pregnancy: Several however did, particularly the *Abbé Hibert*, in whoſe Father's Houſe they lodged at this Time. He had frequent Opportunities of ſeeing Lady *Jane*, and when ſhe went abroad to walk, which was but ſeldom, he attended her; he obſerved when ſhe
D. P. 509. D. was at Home, and in an Undreſs, that ſhe was with Child, and that it was *fort notable*, as he calls it. It ſeems that this Gentleman did not know for ſome Time that ſhe was married, as ſhe retained her Name of Lady *Jane Douglas*; and, having notwithſtanding obſerved her with Child, he mentioned it to his Siſters, and aſked them what Sort of People they had let their Lodgings to, for though they did not ſay they were married, yet the Lady was evidently with Child? Upon which his Siſters ſaid, What is that to us, for they are Foreigners who are here To-Day, and gone To-Morrow!———What the Miſs *Hiberts* have ſaid on the Subject of Lady *Jane*'s Pregnancy has been ſtated.

Mr. *Mac Kenzie*, one of the Officers mentioned by Mrs. *Hewit*, who helped Lady *Jane* into the
——55. A. Stage-Coach, on her leaving *Rheims*, on Account of her being unable to ſtir, ſays, That he dined and ſupped with her ſeveral Times before ſhe left *Rheims*; and that on all theſe Occaſions he obſerved that ſhe was far gone with Child; and that ſhe was ſo remarkably big when he lifted her into the Coach, that ſhe went into the Coach ſideways; and he heard that ſhe was going to *Paris*,
——363. D. to be delivered. The other Officer has forgot every Thing which paſſed at *Rheims*, except lift-
—— 365. C. ing Lady *Jane* into the Coach.

P. P. 5. H. Mr. *Mac Namara*, an *Iriſh* Officer then at *Rheims*, ſaw her often at this Time, and ſays, ſo far as he could judge from her Face, Looks, and Complaints, ſhe had all the Appearances of being with Child; but that he never ſaw her Shape, on Account of her having a Hoop on always when he ſaw her.

D. P. 517. B. Mad. *Mayette* met her in the *Rue des Morts* one Day, and obſerved that ſhe had a great Bulk, and the Poſture of a Woman with Child, and when ſhe returned to *Rheims* ſhe was much thinner.

Mad. *Andrieux*, by whoſe Advice Lady *Jane* went to *Paris*, was dead before the Commence-
P. P. 251. G. ment of this Proceſs; but from her giving her Advice to go to *Paris*, her making or cauſing to be
D. P. 525. B. made Child's Cloaths, and her afterwards being God-Mother to Mr. *Douglas*, it is certain ſhe not
Serv. 68. A. only never doubted, but certainly obſerved the Pregnancy.

D. P. 515. C. Mr. *Querengal*, an Officer of the Cuſtoms, ſaw Lady *Jane* a very few Days before ſhe ſet out, for *Paris*; and obſerved, that ſhe ſat down and roſe up with Difficulty, as a Woman with Child, and that Mr. *Stewart* gave her his Hand to help her to riſe up again: That it appeared to him by her Manner of ſitting down and riſing up, by her pale Looks, thin Face, and by her Shape, that ſhe was with Child; and he looked at her the more particularly, as Sir *John* told him ſhe was going to *Paris* to lye-in.

Such is the poſitive Evidence which has been recovered in the Cauſe of Lady *Jane*'s Pregnancy during the nine Months preceding her Delivery.———The Purſuers make two Replies to this Proof; Firſt, That many of the Witneſſes are abſolutely perjured and falſe; and, Secondly, That Lady *Jane*'s Conduct was inconſiſtent with her being in a State of Pregnancy. Theſe two Allegations muſt be examined in their Order.

PART III. BOOK III.

CHAP. I.

Objections to the Proof of Pregnancy.

TO the Purſuers nothing is ſo eaſy as to impute all the Crimes in a *Newgate* Calendar, for they give themſelves no Manner of Trouble to prove what they charge—Thus they maintain that *Hewit* and *Walker* inſinuate, that Lord *Blantyre* was among thoſe who ſaw the Pregnancy, tho' in fact he went away the Summer before; and what is remarkable, Sir *John Stewart* refers to the ſame Falſhood in the Scroll of his Letter to the Ducheſs of *Douglas*.

See

See what a little Truth will do for these Witnesses — Mrs. *Hewit* says, *at the same Time, (viz.* at the Time they were at *Aix-la-Chapelle*, for she was then detailing what happened *while they staid at Aix-la-Chapelle)* Lords *Crawford* and *Blantyre* were both there—It will be proper to look at the Evidence, because, in transcribing, it is broke into improper Paragraphs, which rather lead to the Misconstruction — *Isabel Walker* says, that while Lady *Jane* was at *Aix-la-Chapelle*, she proved with Child; that she was visited by several *British* that were then there, among others Lord *Blantyre*—Sir *John Stewart* refers the Duchess to Lady *Blantyre* for what my Lord said of the Pregnancy, and adds, that he and Lord *Crawford* expressed their Satisfaction in seeing it advance. In this Fact he was mistaken; but he was more so in his Reference to Lady *Blantyre*, if he thought it false, for there it must have been contradicted—If they had all fallen into the same Mistake, it would not have been wonderful after so many Years, considering how long Lord *Blantyre* lived in the House with Lady *Jane* at *Aix*; and that he actually stood God-father to the Child: Therefore it was scarce worth while to impute it, without any Foundation in Fact.

Serv. 11. a. Serv. 18. r. P. P. 527. c.

2. *Isabel Walker* (the Pursuers say) has betrayed herself, by saying that she was in Use to converse with Mad. *Tewis* on the Subject of Lady *Jane*'s Sickness, &c. — Mad. *Tewis* spoke no *English*, *Isabel Walker* no *French*, even at *Rheims*; for the Miss *Hiberts* say, *Effy Caw* could speak a little *French*, but the other so brokenly it was nothing—This is a two-edged Objection; it wounds Mad. *Tewis*, who, without any Sort of Communication with *Walker*, says, that she, *Avec les Filles de Chambre s'etoient apperçues des premiers Indices de la Grossesse de Mi Lady.*

Serv. 18. b. D. P. 15. r.

The Solution is, they conversed with a *German* Woman in *Dutch*, who, as *Isabel Walker* deposes, could speak both *Low Dutch* and *German*; *Walker*, who had lived with *Dutch* People, and marketed for them a Year and a Quarter, could speak *Dutch*: Tho' wonderful to conceive! she did not speak *French* after travelling in a Stage-coach a Fortnight.

Min. p. 4. K. L.

3. Another Falsehood imputed to *Walker* is, that she put her Hand on Lady *Jane*'s naked Belly, which could not be, tho' she always put her to Bed, and took her up; because Lady *Jane* was modest; because she did not say so on the Service; because she improved on her second Examination, which shewed her Zeal.

P. P. 50. r.

As to the first it appeared afterwards, that it was over her Shift; but taken either Way it deserves no Answer. As to the second and third, she was cursorily examined at the Service, according to the Nature of such Proceedings, more particularly by the Pursuers, and still more distinctly by the Court; and if she were examined forty Times more, she must be a dishoneſt Witness if she should not improve in the Variety of those Circumstances, and Minuteness of her Detail.

Min. p. 3. l.

4. It is further said, she was a discreet Chamber-maid, for she was not told of the Marriage till they arrived at the *Hague*; but they lay together at *Huntingdon* — If the Observation was worth making, her Deposition might as well have been stated fairly, that she thought them married at *Huntingdon*, and was told so expressly on their Arrival at the *Hague*: If they had meant to conceal the Marriage from her, it is not very likely she would have seen them in Bed together.

Serv. p. 18. P. P. 48. b.

5. Mrs. *Hewit* mentioned Lord *Crawford* and Lady *Catherine Wemyss* and her Husband, as Persons to whom Lady *Jane*'s Marriage was known—Lady *Catherine* so misremembers Things, which looked likely to make a firmer Impression, particularly the Note to Captain *Lindsey*, and the Pension being stopt, which certainly did not happen till long after, that it is impossible to say which is right and which is wrong: Nor does it signify a Rush, suppose Mrs. *Hewit*, from her frequent Visits, thought her intrusted with a Secret when she was not. Does that discredit Mrs. *Hewit?* She could not mean to swear false upon a Subject of no kind of Consequence, when she knew Lady *Catherine* was then in *Edinburgh* ready to contradict her: Besides, it began to be much bruited in the Beginning of 1748, and Lady *Catherine* had, in fact, heard the Rumour of it.

— 250. l. — 41. r. — 40. l.

6. *Walker* and *Hewit* are perjured as to the Size of Lady *Jane*'s Breasts when she left *Aix-la-Chapelle*; because Mad. *Negrette* says, that at the latter End of *March* they were *plus enfoncée qu'à l'ordinaire*. What Mad. *Negrette* meant by *enfoncé* is difficult to say, unless it was lower down in her Stays, the Stays being shoved up by the Protuberance of the Belly, as is very commonly seen in pregnant Women. For the particular Form of her Breasts, she says, they were never to be seen, as both before and after the Pregnancy she wore a Handkerchief, which covered all her Breasts; and as Mad. *Negrette* confines her Observation to the Month of *March*, and both Mrs. *Hewit* and *Isabel Walker* speak of the Month of *May*, the Difference of Lady *Jane*'s Breasts at these two Periods would be very considerable.

D. P. 36. a.

7. Mrs. *Hewit* was employed to intimate the Pregnancy, firſt that the Viſitors might take the Impreſſion along with them to aid the Impoſture, as ſhe did to Mad. *Negrette*.

This Obſervation alſo ſuppoſes, as uſual, the Impoſture to be proved; after which it is no-
D. P. 35. D. worſe than falſe in Point of Fact—Mad. *Negrette* firſt obſerved, that ſhe had *Viſage fort tirée*, and told Mrs. *Hewit* that ſhe was much changed, before ſhe was informed by her that ſhe was with Child. Mad. *Negrette* took Lady *Jane* for forty; but Mrs. *Hewit* informed her ſhe was forty-eight, which was no neceſſary Part of the Plan of raiſing a general Belief that ſhe was pregnant. The Story of the Miſcarriage is mentioned before.

8. Mad. *Negrette* is likewiſe falſe in ſaying that ſhe obſerved Lady *Jane*'s big Belly, becauſe
D. P. 35. G. ſhe was in a Hoop, as Mad. *Negrette* herſelf ſays—This depends on the phyſical Impoſſibility of diſcerning a Woman to be big bellied in a Hoop.

9. Miſs *Primroſe* is a falſe Witneſs, which appears not only from what ſhe has depoſed, but
P. M. Br. 1. P. 29. from Circumſtances which prove Subornation: Firſt, ſhe was entertained at the Charge of the *Defender* for ſix whole Months; that is to ſay, the Ducheſs of *Douglas*, wanting an Interpreter, took Miſs *Primroſe* to *France* with her, and with a View, doubtleſs, to corrupt her, did not make her pay for her Board. Secondly, ſhe had daily Intercourſe with the Defender's Friends. Thirdly, they refer to the Defender's Proof, 434 G, without ſaying more—There it appears, that the Ducheſs went further than bearing the Expence of her Journey and Reſidence, gave her a Gown or two, and ſome other ſmall Preſents, for her Trouble and Loſs of Time in being abſent from her Buſineſs of a Mantua-maker in *London*—Thus was ſhe corrupted. The Conſequences of it appear in the Aſtoniſhment ſhe expreſſed at Mad. *Hibert*'s not ſeeing that ſhe was with Child at *Rheims*, when ſhe remembered to have obſerved it at *Aix*, and her Suſpicion that the Gentlemen who came firſt had given Money—Whether her Suſpicion was true is impoſſible now to diſcover, but it was certainly honeſt. The Falſhoods in Miſs *Primroſe*'s Depoſition are theſe,
D. P. 358. E. firſt, That Lady *Wigton* ſhould ſay Lady *Jane* had told her of her Pregnancy, and that ſhe was ap-
Serv. 27. E. prehenſive for her on the Journey; when Lady *Wigton*'s Account is, that ſhe joked Lady *Jane* upon it, who ſaid neither *pro* nor *con*—Now ſuppoſing Lady *Wigton*'s Account to be exact, is not this a ſufficient Acknowledgment of it to bear Lady *Wigton* out in ſaying ſhe had it from Lady *Jane?* In this ſhe is confirmed by Mrs. *Grieg*, but they are both falſe, for Lady *Wigton* could never have *Apprehenſions* for Lady *Jane* on the Journey, after having *joked* her about the Pregnancy. They alſo cavil about the Expreſſion of *Agreeing that ſhe was with Child*, where Mrs. *Grieg* repreſents it as talked of in the Family, who *all agreed in it*, and nobody doubted of it that ſhe heard. The word *agreeing*, it ſeems, is not ſtrong enough to correſpond with their Depoſitions, where they have deſcribed it with pointed Particularity, as extremely apparent. Secondly, That Lady *Jane* lodged in two ſeveral Houſes; whereas ſhe was at *Gilleſen*'s all the while Miſs *Primroſe* was at *Aix*. She remembered neither of their Names, and was wrong in the reſt; but what earthly Purpoſe could ſhe meditate, by wilfully falſifying in ſuch an Article, when all ſhe had to ſay about it was, that ſhe remembered her appearing big, which might have been ſeen at any Houſe.

11. The Falſhood of *Hewit* and *Walker* further appear in this—Baron *Macelligot*, who knew them in *November* and *December* 1747, and had early remarked the Pregnancy, was aſked in
D. P. 352. B. *May* by Lady *Wigton*, if he ſaw no Change in Lady *Jane* ſince his Acquaintance: Upon his ſaying, *No*, to cover the Secret intruſted to him, ſhe thought herſelf obliged to tell the Secret which had been truſted to her, and ſaid ſhe was married and with Child; which implies, they ſay, that her Appearance could not have been ſo bulky as Mrs. *Hewit* repreſents it three Weeks after. Let the Defender take what the Purſuers give him in this Argument: Here was a Change in Lady *Jane* in the Beginning of *May* ſufficient to denote a Pregnancy, in a Manner too plain to be diſguiſed any longer, inſomuch that it became abſolutely neceſſary, in her Opinion, to appriſe the Baron, their common and intimate Friend, of the Marriage: After which, the Difference between a Woman dreſt and undreſt, and three Weeks further advanced, may poſſibly confirm, inſtead of ſhaking the former Witneſſes.

12. They object to Mad. *Tewis*'s Depoſition being read in Evidence, becauſe it was given before the Cauſe began, without the Authority of a Court or Judge, the oppoſite Party not preſent to croſs-examine—The Fact is, that neither Party was preſent to examine: But would the Caſe have been better, if the Cauſe had been begun, and the Witneſs had after that been ſurreptitiouſly examined under a colourable Authority of a Judge fraudulently obtained, examined *ex parte*, and the Evidence locked up quite out of the Reach even of Enquiry from the other Side?—Let it be remembered alſo, that ſeven or eight other Perſons report from Mad. *Tewis* what ſhe knew upon this Subject: Then let it be ſeen in their Volume of Evidence how much of it conſiſts of ſuch Reports from one to another, and if ſuch Evidence may be produced by the Actors in a Cauſe whoſe Buſineſs is to impute the fouleſt Crimes, and conſequently by the

the moſt poſitive Teſtimony; how much more is it receivable in behalf of a Defender, and in Support of the Truth of that Habit and Repute on which he depends to maintain the Poſſeſſion of his State, &c. The Occaſion of ſending for theſe Declarations, and the Purſuers Obſervations upon that, will come to be conſidered hereafter.

But this Objection not being made to laſt, they proceed with the reſt, and ſay ſhe has been flattered into downright Perjury. This is a ſingular Way of ſuborning, eſpecially in a Country where Compliments are ſo cheap; but if it be worth while, for the Sake of ſuch an Objection, to read the Letters in *French*, (not in the abſurd Tranſlations which have been given of them) they will be found to contain no more than Expreſſions of Civility, ſuch as ordinarily occur in almoſt every Correſpondence between civilized People; and they are written with a Confidence which only Truth could inſpire: Without leading to any one Particular, they refer to her own Memory, demanding in theſe general Words ſuch Circumſtances, Knowledge, and Belief as ſhe may have. P. P. 72. c. —— 73. A.

The ſecond Objection to her is, that ſhe agrees with *Iſabel Walker* and Mrs. *Hewit*; and they three alone date the Appearance of Pregnancy before *March*. Serv. 10. E. —— 18. C. D. P. 15. F.

Some of the Symptoms they ſpeak of are ſuch as other Witneſſes had no Opportunity to obſerve, the outward Appearance not being ſo viſible then as afterwards: Thoſe who only ſaw her dreſt, had not ſo good an Opportunity to obſerve them. It is too fallacious to conclude no Witneſs took their Obſervations before *March*, merely becauſe they were not examined to the Dates of them. It is probable that ſeveral other of the Depoſitions do, in Fact, relate to an earlier Date: Particularly Baron *Macelligot*, Mad. *Scholl*, and Lord *Crawford*, certainly obſerved it long before this Time. It is not uſual to convict Witneſſes of Perjury by the Silence of others; but by their Contradictions.

Thirdly, She did not ſtate Lady *Jane*'s Lodging in any other Houſe, but inſinuates the contrary; firſt, by ſaying that ſhe obſerved from Month to Month, the Increaſe of her Pregnancy; ſecondly, by relating that the Cloaths were altered. —— 16. E.

Mad. *Tewis*, who notwithſtanding the Purſuers allow themſelves to treat her thus, was a Woman of Senſe and Honour, contracted great Friendſhip with Lady *Jane*, and continued to viſit her familiarly after ſhe left her Houſe; Baron *Macelligot* ſpeaks of ſeeing her frequently. She had therefore as many Opportunities of knowing what ſhe ſpoke of, as if Lady *Jane* had been in the Houſe, particularly as to the Alteration of the Cloaths, for ſhe employed the Mantua-Maker to do it: But what kind of Head can conceive that Mad. *Tewis* ſhould, without the leaſt Reaſon for it, inſinuate that Sort of Falſhood, which all her Neighbours could contradict; and, probably, the Notary himſelf knew otherwiſe? —— 29. F.

Fourthly, Mad. *Tewis* has ſaid, that ſhe was at Lady *Jane*'s Bed-ſide moſtly in a Morning, which could not be true after ſhe went to another Lodging, as is proved by Mad. *Gilleſen* and *Scholl*—They ſwear that they never ſaw or knew any Body come to ſee Lady *Jane*, before ſhe was dreſſed; but they alſo ſwear that Phyſicians, Surgeons, or Midwives, might have come without their knowing it—To be ſure they might: Who, that lets Lodgings, can ſpeak ſo particularly of the Reſort of People to the Lodgers, as to ſay, negatively, that ſuch or ſuch Viſits were not made—Mad. *Scholl*, in particular, was much miſtaken in her Account of Lady *Jane*'s living ſo much alone; but it appears from both, that Mad. *Tewis* hired the Lodgings for them, and Mad. *Gilleſen* thinks paid for them. It was Mad. *Tewis* ſhe complained to of the Trouble they gave her; and ſhe remembers that Mad. *Tewis* did viſit there, and the laſt Time, the Day of their going, between Seven and Eight o'Clock. —— 475. F.

Laſtly, Mad. *Tewis* has ſaid, that ſhe *frequently* had felt Lady *Jane* with quick Child, *qu'elle avoit ſenti la Vie*. This could not be, becauſe Lady *Jane* was too baſhful to ſuffer ſuch Familiarity, even from a motherly old Woman, who frequented and loved her; and if it had been ſo, ſhe would not have been aſtoniſhed to ſee her ſo big the laſt Morning. —— 30. A. —— 33. C.

Here is a Comment upon the Number of Times included in *frequently*, as ſaid by one, and reported by another, upon the ſuppoſed Meaſure of her Aſtoniſhment, and the Sort of View ſhe might have of Lady *Jane*; as if this ſmall War upon Words were enough to work a Conviction of Perjury.

Her Declarations in Converſation to Sir *George Colquhoon* and Colonel *Douglas*, it is ſaid, were thoſe which engaged her to depoſe beyond her Knowledge—As if they had actually proved the Perjury; as if her notorial Declaration did not iſſue before thoſe Converſations; as if her other Converſations and Letters, which are in Evidence, were not to the ſame Effect; and as if there were a Jot better Reaſons to ſuſpect the Truth of her Diſcourſe than of her Oath.

13. The

13. The next Falſhood is a Diſcrepancy between Lady *Jane's* Pocket-Book, which ſays truly, they ſtaid at *Sedan* nine Days: Whereas Mrs. *Hewit* ſays two or three Days; and *Walker*, ſome Days. This ſeems to require no Anſwer.

14. Mrs. *Hewit* is falſe in ſaying, that Lady *Jane* ſeemed likely to be delivered at *Sedan*—It muſt be confeſſed there is no Evidence of this; the Diſorder Mrs. *Hewit* alludes to happened at *Rhetelle*; and ſhe, who knew no *French*, and was ill at remembering Names, as appears by many Witneſſes, put one Place for another.

Serv. 19. E. 15. *Iſabel Walker* is falſe in reporting the Converſation between Lady *Jane* and the Landlady, who dropped a Curtſey, and hoped her Ladyſhip had not far to travel, for ſhe obſerved her to be near her Time; Lady *Jane* ſaid, how do you know? The Landlady anſwered, that if ſhe had not ſeen her Bulk, ſhe knew by her Face. This *Iſabel* partly underſtood, and found to be in part the Converſation from Lady *Jane* herſelf.

This, they ſay, is falſe; firſt, becauſe if Lady *Jane* had been likely to be delivered, the Landlady could not have obſerved it as an extraordinary thing that ſhe was likely to be delivered, nor Lady *Jane* have anſwered by ſo vacant a Queſtion. As Lady *Jane* was not likely to be delivered, there needs no further Diſcuſſion of the Solidity of this Remark. Secondly, as *Iſabel Walker* did not underſtand the *French*, it is unlikely Lady *Jane* ſhould have explained ſo immaterial a Converſation. As they have not ſaid why it is unlikely, it is not worth the Trouble of proving ſo natural an Incident likely. Thirdly, this is like her converſing with Mad. *Tewis*, as that Converſation was in *Dutch*, which ſhe did underſtand, and this in *French*, which ſhe did not pretend to know. The Purſuers are begged to ſhew the Likeneſs.

Fourthly, If Lady *Jane* was really ſo big as repreſented, why ſhould ſhe aſk the Landlady how ſhe knew? The bigger ſhe was, the more Cauſe ſhe had to enquire anxiouſly what Reaſon the Landlady had for intimating that ſhe could not travel much further. The Trouble of ſtating ſuch Objections as theſe is the whole Difficulty of anſwering them.

—19. D. 16. *Iſabel Walker* is falſe in the Account ſhe gives of Lady *Jane*'s Diſorder at *Rhetelle*, which ſhe deſcribes to be ſo bad, that *they were afraid of her being brought to Bed*; but having recovered, they proceeded to *Rheims*—Being examined to it more particularly afterwards, ſhe ſays, that on Min. 6. D. her Arrival at *Rhetelle*, ſhe was taken ill and diſtreſſed, and immediately was carried into a Bed-Room and went to Bed; *Iſabel* continued cloſe in the Room by her, and ſat up all Night, and conſidered the Fatigue of the Journey as the Cauſe of her Illneſs to a Woman in her Situation —Mrs. *Hewit* went backward and forward while Lady *Jane* was in Bed.

P. P. 895. 1. This is falſe, becauſe it differs from *Guenet*, who ſays, that on her Arrival at the Inn, ſhe complained of being out of order, would take no Supper, aſked for Soup, which ſhe took, and was then conducted to Bed—The Companion and Maid-Servants went with her, and ſtaid till ſhe was in Bed, when they came out and ſupped at another Table.—Where is the Difference? Unleſs *Tibby Walker* is perjured, in ſaying ſhe ſat up with her all Night, whereas Mrs. *Guenet* ſays ſhe came out to eat her Supper.

Secondly, *Walker* means to convey that ſhe *ſtopt* at *Rhetelle*. Quite otherwiſe; her being Min. 6. 1. taken ill alarmed them with the Fears of her Delivery, as in ſuch a Situation every thing is apt to do, but it turned out to be only a Diſorder occaſioned by Fatigue; and in the very ſame Sentence ſhe ſays, that Lady *Jane* recovered it, and went on the Reſt of her Journey—This is what they call conveying, that ſhe was taken ill and obliged to ſtop at *Rhetelle*.

Thirdly, Mr. *Guenet* heard nothing of her being likely to be brought to Bed—Wonderful indeed! that the Women ſhould let their firſt Apprehenſions of that Sort go off without explaining them to a Notary.

Fourthly, no Aſſiſtance was called in, which, if they really feared a Miſcarriage, they muſt have done—If the Pains and ſtrong Symptoms of a Delivery had appeared, it is moſt probable they would have enquired for Aſſiſtance, even in ſuch a Village as *Rhetelle*, where, for aught to be ſeen to the contrary, the Midwives may be as good as thoſe of either *Liege* or *Rheims*; but is any ſuch Caſe pretended? Mrs. *Hewit*, Sir *John Stewart*, and *Walker*, who all ſpeak of this Accident, though the two firſt have confounded the Names of the Places, only ſay that ſhe was taken ill, and that *they* feared a Delivery. An Apprehenſion, however ill-grounded to People of Knowledge, was naturally enough the Firſt to occur to them; but no ſuch Pains coming on, and Lady *Jane* recovering when ſhe was put to Bed, that Apprehenſion vaniſhed, and all the Neceſſity of attending to it further.

Again *Tibby Walker* is falſe in her Deſcription of Lady *Jane*, that ſhe was too heavy to go in and out of the Coach by herſelf, and Sir *John* lifted her: Whereas all that Mr. *Guenet* remembers is,

is, that Sir *John* handed her, and ſometimes he gave her his Hand on the other Side—She was wrapt up in a long Cloak, and he did not know ſhe was married.

17. Mrs. *Hewit* is falſe in ſaying that Lady *Jane* was too heavy for walking when at *Rheims*, and never walked in the Streets but once; and this Falſhood was meditated upon Sight of Mad. *Mayette*'s Depoſition, who happened to meet her once in the Street, and is proved by the *Abbé Hibert*, who frequently walked with her; and by Mr. *Querengal*, who ſaw her out two or three times. P. P. 251. B. D. P. 516. B.

If Mrs. *Hewit* had the Aſſiſtance of Mad. *Mayette*'s Depoſition to form her Teſtimony by, it is rather unaccountable that ſhe ſhould not have ſeen the Reſt, which were equally acceſſible.

It does not ſeem to be very material, whether Mrs. *Hewit*, at the End of ſeventeen Years, was very accurate in her Accounts of Lady *Jane*'s Walks; but if that be material, it is poſſible ſhe may be pretty exact; in the Service ſhe is giving a general Deſcription of her Bulk, and calls it too heavy for walking—It would be ſtrangely narrow to infer from ſuch an Expreſſion, that ſhe could not ſtir; for, ſhe ſays, ſhe walked to the Coach at the ſame Time.—In her ſecond Examination, ſhe ſays, ſhe was not *often* abroad, and walked *in the Street but once*; plainly diſtinguiſhing between her going abroad and walking in the Street: By the laſt, ſhe poſſibly meant her going to *Querengal*'s; by the firſt, her reſort to the Garden, which was hard by, in which ſhe went to take the Air, and reſted herſelf upon the Benches which are placed there; and this Circumſtance alſo ſolves the Wonder which the Purſuers affect to expreſs at her ſevere Exerciſe in walking from ſix to eight.

18. Mad. *Mayette* is falſe, and was bribed by dining twice with the Dutcheſs of *Douglas*; and alſo inſtructed by reading a Memorial publiſhed for the Defender in *France*, in which there is not a Syllable concerning the Pregnancy at *Rheims*—This ſhews the Diligence of the Agents, who could employ ſuch laborious Means to bring a Witneſs up to the Point of ſwearing that ſhe ſaw Lady *Jane once* in the Street, and judged by her Figure and Poſture, that ſhe was with Child. What muſt they have done with twenty or thirty Witneſſes more, who give ſuch pointed Accounts of her Pregnancy?

The abſolute Proof of her Falſhood conſiſts in this, that ſhe ſwears *Macnamara* hired her Houſe for them after Lady *Jane* went to *Paris*, whereas ſhe went from home the Beginning of *July*, and was abſent till after their return from *Paris*; which was upon *Auguſt* 16, when the Rent commenced. All this is reconciled by only ſuppoſing that which is proved to be true, that the Houſe was hired to commence at Rent at an uncertain Time; that is, when ſhe ſhould return from lying-in, which is of itſelf a Degree of aſcertaining of the Time: But it is ſaid *Macnamara* could have had no ſuch Commiſſion, becauſe one Mad. *Vatry* depoſes that Lady *Jane* invited her to viſit her on her Return to *Rheims*, at Mr. *Hibert*'s—Whether the Witneſs ſuppoſed them at Mr. *Hibert*'s, knowing they had been there before, or whether that was really pointed out as a Place to enquire for them, is not worth diſcuſſing, becauſe it is abſolutely certain they had left *Hibert*'s altogether—The Maids were gone to lodge at the *Couture*; and that they knew another Lodging had been taken appears from Mrs. *Hewit*'s Letter to the Maids of the 12th of *Auguſt*, where they are ordered, without more particular Direction, to make Fires: From which it is plain the Houſe had been taken, though the Rent did not commence till the 16th, and conſequently taken in the Manner mentioned before, for an uncertain Time—This is their Proof *poſitive*; the Reſt is Argument from the Improbability of her taking ſo much notice of Lady *Jane*, as to remember her again, and obſerve the Difference of her Appearance two Months after. The other Improbability is, that ſhe ſhould ſee that Poſture and Bulk under a Dreſs which *Abbé Hibert* ſays covered it from him; or, to be more correct, which knowing it before, he ſays he never looked at. — 517. D. P. 513. Serv. 36. B.

19. Mr. *Mackenzie* is perjured in every Particular, which appears from his pretending to ſee the Bulk of Lady *Jane*, notwithſtanding her Hoop, which Perjury is common to him, with Mad. *Mayette*, and about ten or twenty more Witneſſes. Secondly, from the Differences between his Depoſitions and Mr. *Maclean*'s; but nothing better could be expected from him, who is but a Lieutenant in the *Dutch* Service, while *Maclean* is a Major-General in the *Portugueze*. D. P. 53. E.

They ſay it is falſe, that Sir *John Stewart* told him Lady *Jane* was going to *Paris* to be delivered, becauſe General *Maclean* does not remember to have heard it till after they went; ſecondly, becauſe Mrs. *Hewit*, on the 12th of *Auguſt*, gives the Maids leave to tell the Delivery to Mr. *Mackenzie*, as Lady *Jane* had now written of it to her Brother: His knowing why they went would never inſtruct him of the Time of Delivery; but that Leave to tell him of her Delivry, rather confirms that he knew why ſhe went. — 53. F. Serv. 86. D.

Again, General *Maclean* does not remember taking Notice of the Pregnancy, but he gives her Dreſs, and the Diſtance of Time, as probable Reaſons for that; therefore Mr. *Mackenzie* D. P. 363. E.

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muſt be perjured, who remembers *Maclean*'s talking of it as they went Home from the Stage-Coach.

Mr. *Mackenzie* is alſo forſworn in his Deſcription of Lady *Jane*'s getting into the Coach with ſuch Difficulty; but here *Maclean*'s Deſcription is ſomewhat ſtronger: That they were obliged to lift her up with both their Hands, which, though he does not undertake to remember her Figure, is a pretty ſtrong Deſcription of Unwieldineſs.—This is alſo proved by Mrs. *Hewit* and *Tibby Walker*; and yet, in their *Plainte* of *May* 20, they averred that Nobody was ſeen to help her into the Coach, on Account of her pretended Bulk, which they add, Mrs. *Hewit* had ſaid did not allow her to move, or alight out of the Coach—Upon what Authority they imputed that Saying to Mrs. *Hewit* has not yet been explained.

P. P. 251. E. Mrs. *Hewit*, they ſay, is falſe in ſaying Lady *Jane* had no new Cloaths made, or old ones altered at *Rheims*, before ſhe went to *Paris*, Mad. *Sautrez*, the Mantua-Maker, having depoſed the contrary: If Mad. *Sautrez* be exact, which there is ſome Reaſon to doubt, Mrs. *Hewit* muſt have forgot it, which is eaſy to imagine of ſuch a Circumſtance, or muſt be ſuppoſed to ſwear a Fact, which ſhe knew would be contradicted by one at leaſt, probably by many Witneſſes—This is not the Choice of Facts which Perjury uſually makes; but this is not all, ſhe muſt have denied a Fact which bore a Countenance for Lady *Jane*'s Innocence—The altering her Cloaths, and employing a Mantua-Maker about her Perſon, at ſuch a Time, can never
——68. H. be turned to Proofs of Guilt.

Lady *Jane's* own Falſhood, relative to the ſame Period, is proved in a *Manner* worth Notice—Miſs *Margaret Primroſe*, aged ſixty, unmarried, and ſolemnly ſworn, depones that Lady *Stair* told her, that Lady *Jane* told Lady *Stair* that ſhe intended to have lain in at *Rheims*; but that the Morning after ſhe came there, a Lady of the Place deſired to ſee her: Lady *Jane* ſent Anſwer ſhe was fatigued in Bed, and could ſee Nobody; the Lady ſent Word it was a Matter of Conſequence, ſhe was admitted, ſhe begged Pardon for intruding, but it was Matter of Conſcience, ſhe heard ſhe was come there with the Intention to lye-in; and that ſhe was obliged to tell her that there was Nobody in that Town capable of doing the Office of Midwife. Lady *Jane* ſaid ſhe had ſent away her Coach, and her Finances were too low to proceed further; but that the Lady's Arguments were ſo pathetic, that ſhe perſuaded her to take a Poſt-Chaiſe, in which Lady *Jane* and Mrs. *Hewit* went to *Paris* that Day: Lady *Stair* reminded her, that in *Paris* there were always *Britiſh* People of Credit; and that conſidering her Age and her Enemies, ſhe ſhould have lain in *royally*: To which Lady *Jane* anſwered, that it was not in her Power, as ſhe was but Half an Hour, or an Hour and a Half, in *Paris* before ſhe was delivered.

This romantic Story, the Purſuers ſay, was adopted by Mrs. *Hewit*, and applied to Mad. *Andrieux*; but as ſhe had applied it to Mad. *Andrieux*, ſhe could not give it the turn of a ſtrange Lady—How Mrs. *Hewit* is confirmed in her Story will be ſeen elſewhere; and if this *be* the ſame Story, it is ſo ſtrangely diſguiſed, that it requires narrow Attention to diſcern even the Figure of the real Foundation, *viz.* her being adviſed to go to *Paris*.

The Purſuers call the Story romantic, and ſo it is, to the fulleſt Idea of Abſurdity which that Word conveys—It is not of a Force even to pretend to Belief; a Stranger-Lady, with ſo importunate a Conſcience that ſhe could not wait Half an Hour, intruding indeed, as ſhe called it, to give ſuch Advice, and Lady *Jane* in ſuch a Hurry, that ſhe never thought of aſking whom ſhe was obliged to, brought to-bed in Half an Hour after going into *Paris*—It was enough to provoke the Suſpicion of Charity itſelf: Nor is the internal Abſurdity the fooliſheſt Part of it; it is ſo groſsly diſproportioned to every Part of the real Story, as admitted on all Hands, that it was not calculated to ſtand a ſingle Queſtion. Aſk at *Rheims* how Lady *Jane* came there? It was in the *Diligence*, ſhe had no Coach to ſend away. Aſk how long ſhe ſtaid there? Three Weeks. Aſk how ſhe went away? In the *Diligence*, there was no Poſt-chaiſe to be had. Aſk when ſhe went? The Second of *July*. When ſhe was ſaid to be brought to-bed? The Tenth. How long in going? Three Days. It was natural to expect all theſe Queſtions would be aſked—Only four Years had then paſſed, the Falſhood would have turned up immediately; nay, without going to *Rheims*, the Proof of the Falſhood was then in *Scotland*; her Letters to the Duke fixed the Tenth of *July* as the Day of the Birth: So did the Letters to Mrs. *Hepburn* of *Keith*, Mr. *Douglas*, Mr. *Colville*, and many more; their Letters to Lord *Crawford*, Mrs. *Hepburn*, and others, while they were at *Rheims*; their Viſit at *Liege*; all proved the Falſhood of a Story which pretended they had ſtaid there a Day: And that Sir *John* did not ſtay behind, is evident from all theſe, and more Circumſtances ſtill: She could not miſtake one of theſe Paſſages, they were all noted in the Pocket-book. If ſhe had been Fool enough, (tho' this is the firſt Time ſhe is charged ſo) to meditate ſuch improbable and idle Lies, ſhe would ſurely have concerted them with her ſuppoſed Accomplices, and not have left them to tell a different Story, which they all did long enough before this Suit began: She would alſo have

deſtroyed

deſtroyed her old Journal, if not forged a new one, and not have been ſo careleſs as to leave that alſo behind to contradict her: But ſtill beyond the abſolute Impoſſibility of ſuch a Story being true, the Converſation which actually did paſs on the Occaſion alluded to, was told by Lady *Stair* herſelf in a very different Manner to the Duke of *Douglas* himſelf, to whom another *Clatter* (as Lady *Stair* calls it) of the ſame Complexion with this had been told by Lord *Dundonald*. Her Ladyſhip expreſſes herſelf with great Earneſtneſs, and aſſerted, that as ſhe ſhould hope to ſee God, all the Converſation ſhe ever had with Lady *Jane* concerning her Children was this: One Day Lady *Jane* came in to her with the two Boys, and ſaid in a jocular Manner, Do you know that my Brother calls my Sons *His Pretenders?* Upon which Lady *Stair* anſwered, I wiſh Lady *Jane* you had come home, and borne them in as public a Manner as the Queen of *England* does hers—To which Lady *Jane* replied, ſhe was ſick to Death at Sea, and having done ſo, would have endangered her own Life, and what ſhe carried about with her, beſides other Inconveniences under which ſhe then laboured. Lady *Stair* repeated, that this was all the Converſation ſhe ever had with her; and that ſhe never had a Doubt about the Children till Lord *Dundonald* told her the falſe Story mentioned in the firſt Part—This is ſurely more likely; and beſides Lady *Stair*'s ſolemn Affirmation that it was all, it would have been impoſſible to remain ſo clear of all Doubt about the Birth, if that which the aforeſaid Miſs *Primroſe* relates had been Part of it. P. P. 352. F. D. P. 427. C.

Beſides the Purſuers now at leaſt know, that Lady *Stair* has often denied ſtill more pointedly and expreſsly that any ſuch Converſation happened as this ſuppoſed by Miſs *Primroſe*—The latter may have heard ſuch a *Clatter* (or Rumour) for many ſuch were induſtriouſly ſet about, and have had ſome Reaſon, not diſcovered, or at leaſt not produced in Evidence, for applying it to her Mother, who died in 1759. But the moſt remarkable Part of this Lady's Report from her dead Mother is, that the Duke of *Douglas* ſaid he had been at great Trouble and Expence in making Enquiries, and was ſatisfied the Children were not his Siſters: Whereas it is abundantly proved, that an Enquiry was all the Ducheſs laboured to perſuade him to; and it is notoriouſly falſe that he ever made any: And it moreover appears, that when Lady *Stair* took this Occaſion to deſcribe the forlorn Condition in which Lady *Jane* was left to die, both ſhe and the Duke had Tears in their Eyes.

By the ſame Sort of Evidence, the Purſuers have been lucky enough to prove it altogether a Falſhood that Mrs. *Hewit* was ever at *Paris* at all—Mrs. *Carſe*, who died in 1755, told Lady *Cheſterhall* that Mrs. *Hewit* told Mrs. *Carſe*, that Nobody went to *Paris* upon the Occaſion of Lady *Jane*'s lying-in, but Sir *John*; that ſhe herſelf, in particular, was not preſent at the Birth, but was left behind with the Family, the Reaſon of which was, their Want of Money, and a Deſire to lie-in privately: Upon which her Ladyſhip obſerved to Mrs. *Carſe*, that ſhe was ſurprized Lady *Jane* ſhould chuſe to travel without Women, as Ladies are commonly timorous on ſuch Occaſions. This Converſation happened in 1752, ſo Mrs. *Cant* told her Daughter Mrs. *Janet Cant* that Mrs. *Hewit* told her, upon a Viſit to Mrs. *Monro*; the ſame Story, in effect, as Lady *Cheſterhall* told before. This was before the Year 1758, but how long the Witneſs does not know—Miſs *Cranſtown*, in ſpeaking of a Converſation which happened ſome few Years before that, thought that ſhe remembered Mrs. *Hewit* to relate that they were all at ſome Inn, where Lady *Jane* propoſed to be delivered—The Landlady repreſented againſt that, and adviſed Lady *Jane* to go off directly to ſome other Place, as there was no right Aſſiſtance to be got there; upon which ſhe ſent to take Places in a Stage-Coach, where only two Places were to be had, upon which ſhe propoſed it to Mrs. *Hewit* to go with a Woman-Servant in the Baſket before the Coach; this Mrs. *Hewit* and the Maid declined, upon which Lady *Jane* and Sir *John* ſet off alone, and left them behind; Mrs. *Hewit* came up with them next Day, and found her delivered; but upon being told that Lady *Jane* had two Maid-Servants, which ſhe had never heard of before, ſhe expreſſed herſelf with doubt—She *thought*, but was not *poſitive*, it was Mrs. *Hewit* who was left behind. — 71. E. — 70. L. — 69. R.

None of the three Ladies laſt mentioned intended to ſwear falſly: Theſe were Rumours induſtriouſly circulated at the Time; and they, having no perſonal Knowledge of the real Circumſtances, confounded them, and forgot how they came by them: And it is not doubted but every one of them, if they are told, what now is notorious, would agree their Reports were impoſſible, and would retract them; for it is abſolutely certain, that Mrs. *Hewit* uniformly ſaid, that ſhe was preſent at Lady *Jane*'s Delivery: And indeed the Purſuers have never made the leaſt Mention of theſe Depoſitions.

Effy Caw has her Share in the Invention of Falſhood. She told Mad. *Hibert*, that Lady *Jane*'s Reaſon for leaving *Rheims* was to have two *Engliſh* Gentlemen preſent at her Delivery to legitimate the Child; and ſhe told Mad. *Sautrez*, that it was to have the Preſence of the *Engliſh* Reſident. The firſt Converſation is ſuppoſed to happen during their Abſence; the ſecond after their Return: Upon which, the Purſuers conclude, with the Affectation of ſome Triumph, that the Pretence of wanting Aſſiſtance at *Rheims* was calculated for the Meridian of *Britain*, that of the *Engliſh* Reſident for *Rheims*. — 903. E. — 909. R.

It has been ſeen, that the ſuppoſed Want of Aſſiſtance would not have been extremely ill calculated for the Meridian of *Rheims*: The Pretence of going to the *Engliſh* Reſident was calculated for neither Place three Months before the Peace, which was ſigned on the 19th of *October* following. But what has Lady *Jane* to do with this Story? Is ſhe ſuppoſed to have given out ſo groundleſs a Pretence, where every Body would have ſtared at the abſurd Falſhood? *Iſabel Walker* ſays, very truly, ſhe never heard of it. Did *Effy Caw invent* it? Then ſhe is alſo an Accomplice; which the Purſuers have thought fit to deny on ſome other Occaſions. Theſe two Ladies may have talked to this Effect with one another, reaſoning upon Foreigners having Children in *France*: Or, conſidering how directly they are contradicted; one about the Pregnancy, where ſhe contradicts herſelf, and plainly ſuppreſſes her Knowledge of it; the other about the Gowns, they may never have heard a Word about it till after the *Tournelle* Proceeding; and probably it was after the ſecond *Plainte*.

Theſe are the Falſhoods upon which above a Dozen of Perſons, all of the moſt unexceptionable Characters, and totally diſconnected with each other, and with the Defender, are to be proved perjured; in order that it may thence be poſſible, that Lady *Jane*, Sir *John*, and Mrs. *Hewit*, may have committed a Crime.

PART III. BOOK IV.

Conduct during the Pregnancy.

CHAP. I.

Pregnancy ſaid to be aſſumed after the Fourth of March.

ANother Medium by which the Witneſſes who have proved Lady *Jane*'s Pregnancy are to be perjured, is, 1. That the Appearances of Pregnancy mentioned by them were ſuddenly aſſumed, upon the Appearance of Peace; and, 2dly, That her Conduct was inconſiſtent with the Idea of her ſuppoſing herſelf big with Child.

The firſt Part of this Hypotheſis is, that in the Beginning of *March*, or at leaſt ſome Time
P. P. 538. 6. before the 4th, the Date of her Letter to Mr. *Haldane*, ſhe foreſaw the Peace; and then took up the Appearances of Pregnancy, the Fraud of which is marked by the Suddenneſs of theſe Appearances.

The firſt Thing which croſſes this Idea is the poſitive Teſtimonies of Mad. *Lewis*, Mrs. *Hewit*, *Iſabel Walker*, and probably many others, who all obſerved the Commencement of Lady *Jane*'s Pregnancy, from the Beginning of *November* downwards. But even giving them this for a little, what ſhould induce her to take up, all at once, an Appearance of being ſix Months gone with Child, which muſt have created Suſpicion, or Wonder at leaſt, in all her Acquaintances, but more than Suſpicion at Home; when, by taking a little more Time, that Source of Suſpicion would have been avoided? Out of near forty People produced, and referred to, nothing like Suſpicion or Wonder occurs.

2. How comes ſhe to have known of the Peace ſo certainly as to make the Preparations for Fraud in ſuch a Way as bound her down, at leaſt, to a Month?

Turn this Argument the other Way, and ſee where their own Principles lead: It was a Madneſs ſhe never thought of, to hold out the falſe Appearance of Pregnancy till the Proſpect of Peace gave her Hopes of ſtealing a Child at *Paris*: She had no Hopes of a Peace before *March*, that is to ſay, not till two Months before the Empreſs Queen, and the Generality of Mankind, were ſurprized with the News of it. It is proved by many Witneſſes, that ſhe ſhewed the Appearances of Pregnancy by *November* preceding; therefore ſuch Appearances muſt have been real.

3. In this Place, upon what Foundation is it ſaid that ſhe took up the Pregnancy in *March* for the firſt Time? Firſt upon a Paſſage in the Evidence of Mrs. *Hewit*, who, in deſcribing the Progreſs of Lady *Jane*'s Pregnancy, ſays it became remarkable and apparent in the ſixth Month; from which Words it is inferred, that ſhe intends to deny the Exiſtence of thoſe Symptoms which denoted the Commencement of the Pregnancy as early as *November*; or, at leaſt, that ſhe ſpeaks Truth here, but is perjured before, together with the other Witneſſes, who depoſe to the ſame Effect.

Effect. Secondly, That in the Beginning of *February*, it could not be later than the Tenth, Lady *Catharine Wemyss* did not obſerve her to be with Child, that is to ſay in the fourth Month of her Pregnancy, and believing her unmarried. But, ſay the Purſuers, the very Circumſtance of denying the Marriage proves that ſhe was not really with Child: In which Caſe it would tend to baſtardize her Iſſue, and that ſhe had not then began to counterfeit it; for they muſt acknowledge ſuch a Conduct is ſtill more repugnant to that, inſomuch as it would tend ſtill more to prevent People acceding to the Belief of a Pregnancy.—Unluckily for this Argument, the Marriage was concealed long after the Period at which they are pleaſed to ſuppoſe ſhe did begin to counterfeit. Why ſhe choſe to conceal her Marriage it is impoſſible to gueſs at all, if ſhe is thought to counterfeit Pregnancy; and as it is, can only be gathered from the Reaſon ſhe aſſigned for it herſelf, the Fear of irritating her Brother more. This has all the Appearance of being her true Motive, and indeed a ſufficient one; but whether it be ſo or not in the Opinion of others, has certainly nothing to do with this Queſtion. The Poſſibility of baſtardizing her Iſſue no more entered into her Head at this Time, than of illegitimating them when ſhe was lying-in: Though it muſt be confeſſed, that if the Purſuers had thought fit to deny their Marriage, their Argument might have been full as plauſible. Except that lying-in is a Compaſs ſomewhat narrower, the Fallacy might have been more extant. P. P. 41. r.

If the Meeting of the Plenipotentiaries gave her ſuch Expectations, ſhe would have ſet about her Scheme as early as *January* at leaſt, when Lodgings were actually got ready for them; but it is extremely certain, that neither that Congreſs, nor any other Circumſtance in public Affairs, promiſed Peace in the general Opinion, till after the Preliminaries were ſigned on the 30th of *April* (long before which her Pregnancy was notorious at *Aix*, and notified to the Duke.) The Congreſs was thought a Farce---perhaps there is no better Way of aſcertaining what was really the general Opinion than by the State of the *Engliſh* Funds.---From *Michaelmas* to *Chriſtmas* 1747, the Three *per Cent.* had been between Eighty and Eighty-Two. In *January* 1748, the Books opened at Eighty; and by the 4th of *March*, the Date of Lady *Jane*'s Letter to Mr. *Halden*, which they ſuppoſe the Commencement of her Pregnancy, they had ſunk below Eighty.—On the 10th of *April*, when ſhe communicated her Pregnancy to her Brother, they were down at Seventy-Six: At the ſame Time *Maeſtricht* was inveſted; and it appears by Lord *Crawford*'s Letter of that Period to the Duke of *Douglas*, that he expected another warm Campaign: He therefore gave no Encouragement to this imaginary Project. D. P. 965. A.

Theſe are the Grounds upon which they maintain this Part of their Propoſition, which takes up the Pregnancy of a Woman ſuppoſed unmarried at the fifth or ſixth Month before the external Appearance uſually becomes ſo apparent as it afterwards does, eſpecially in the firſt Time of conceiving: Which takes it for granted that none of the Obſervations depoſed to were made before that Time; becauſe they are related generally, and the Dates of them were not thought material; and which preſumes four or five Witneſſes inevitably perjured, and all the Reſt probably ſo.

CHAP. II.

Of the Purpoſe to ſettle at or near Geneva.

THE Purſuers in the next Place proceed to ſuppoſe, That having taken up this Reſolution to go to *Paris*, and ſteal two Children with all poſſible Expedition, they give out falſely that they were going another Way; but they have not given themſelves the Trouble to explain what one Reaſon upon Earth they could have for ſo doing. Every Body at *Aix* believes (at leaſt they ſwear they knew it) that ſhe was really with Child. One of her oſtenſible Reaſons for going was, the greater Facility of getting better Aſſiſtance: *Paris* would have been the Place which ſuch a Motive would have indicated, nor could it have been thought extraordinary.—The direct Road to *Paris* was alſo ſhorter, better, and more conformable to the apparent Condition then that they propoſed to take.

Therefore that they meant to go to *Paris* is aſſerted only becauſe it is falſe; for if it had been true, there would have been no Harm in it, nor Reaſon againſt diſcloſing it.

It cannot be reaſonably expected that at this Diſtance of Time a clear and preciſe Account ſhould be given of every Purpoſe they conceived and every Movement they made, accurately aſſigning all the Dates, Circumſtances, and Occaſions which produced them: It is to Accident alone the Appellant is beholden for any Account whatever of Perſons in whoſe Conduct at that Time nobody appears to have taken any Concern; and though the Purſuers ſeem to think it a Thing much to be expected, that when ſhe declared her Pregnancy, the Duke, or *others intereſted, would have ſent to obſerve and examine her*; it is now only to be lamented that they had ſuch *good* Reaſons for holding a different Conduct: But thoſe *other intereſted Perſons* who were *then*

called upon to obſerve *and examine her*, and choſe to omit it, muſt not *now* preſume every Part of her Conduct to be wrong which Time and their own induſtrious Acquieſcence have ſuppreſſed: It is enough to prove that they meant to go elſewhere than to *Paris:* That they might have meant ſo, it is certainly enough that they profeſſed at the Time to mean ſo, unleſs the Falſhood of that Profeſſion could be proved; but it happens to be in Evidence not only that they propoſed, but that they acted upon that Purpoſe; and others of their Friends and Correſpondents acted upon it too.

The Diſagreeableneſs of lying-in at *Aix*, where ſhe had lived with People of Faſhion as a ſingle Woman, was increaſed by the Increaſe of Reſort, the growing Expence, and the extreme Badneſs of the Accommodation.

She appears alſo to have always wiſhed for an Opportunity of going to ſome Proteſtant Country, where ſhe might alſo live cheap.

That in conſequence of her expreſſing ſuch Wiſhes, *Geneva* had been recommended as anſwering both thoſe Purpoſes; but when this was recommended, or when ſhe took up the Reſolution of going, does not appear exactly. It is manifeſt, however, that it was ſome
P. P. 998. Time in *March*, or the Beginning of *April*, for the Plan was ſettled before Lord *Crawford* left
— 562. G. *Aix*; which was probably the 10th or 11th: He was at *Aix* on the 9th. Mr. *Khar* wrote to him on the 16th; and Sir *John Stewart* on the 17th, complains that he had been ſo *long* without writing.

The Plan was to go to *Geneva* through *Luxemburg* and the eaſtern Part of *France*, which was to be done by Paſſes; for as to the Roads being open, that was not even dreamt of then: Lord
— 563. F. *Crawford* had Occaſion to ſend two Horſes and a Servant to Lord *Garnock* at *Milan*, and they were to have taken them along with them; and it was alſo ſettled that Application ſhould be made to Lord *Sandwich* for a Paſs.

— 561. K. Soon after Lord *Crawford*'s Departure, Sir *John Stewart* wrote that he was diſappointed of getting a Paſs from Lord *Sandwich*, who could not give one for *Britons* to paſs Southward, nor yet could the *French* Ambaſſador: He explains to him that Marſhal *Bathiani*'s Paſs would do better for paſſing through *Luxemburg* than even the Duke of *Cumberland*'s; and that Marſhal *Saxe* muſt give a Paſs for what Part of *France* they ſhould have Occaſion to paſs through. He begs in my Lady's Name for a Paſs from the Marſhal *Bathiani* or the Duke; and he ſhall think it ſtrange if the *French* Miniſter will not write to Marſhal *Saxe* for his Paſs.

On the 17th of *April* he wrote again, expecting however that the firſt would arrive at the
— 563. C. ſame Time; in which laſt he talks of ſetting out in eight Days, and deſires to know if he continued in Mind to ſend his Horſes and Footman to *Italy* with them.

— 562. B. On the 28th of *April* Lord *Crawford* wrote to Sir *John Stewart* as to the Paſſes: He does not ſeem to have found it eaſy to procure them: He thinks they might venture through *Luxemburg*, as there ſeemed to be a Neutrality there; but in all Events, a Paſſport from the Imperial Ambaſſador, or a plain Letter from him to Marſhal *Nighbourg*, would be ſufficient; though he is perſuaded that Lady *Jane*, by her Acquaintance with Mad. *La Feldt*, Marſhal *Bathiani* might get one from him: But he thinks the Name of *Stewart* would be an Objection, if he ſhould mention that, and his Purpoſe to go through *France*. As to the Footman and Horſes, he had actually ſent them, with Directions that they ſhould uſe them on their Journey, and then ſend them on to *Milan*; and aſſures Lady *Jane*, that he would write to her by the Time ſhe arrived at *Geneva*.

— 566. D. On the 24th of *April* Sir *John Stewart* writes to Lord *Crawford*, and tells him, that his Horſes and Footman will be of great Accommodation to him on his Journey; the more eſpecially, as Lady *Jane*'s only Footman could not go with them, having been a *French* Deſerter. He thanks him for his Purpoſe of writing to them at *Geneva*, and for the Paſſes; by which laſt, he muſt mean his Lordſhip's Care and Directions how to procure them; for, in Fact, the Paſſes were not got. He
— 567. H. deſires that a Watch, which was to come from *Vienna*, might be put into *Florentine*'s Hands, a Wine-Merchant, that he might bring it to him in *October* following, when he ſhould come into *Burgundy*. In all theſe Letters *Geneva* is not mentioned as a new Thought, but referred to as Part of the Plan, which was underſtood between them before his Lordſhip's Departure from *Aix*.

D. P. 965. D. On the 1ſt of *May* Lord *Crawford* writes to Sir *John Stewart*, and expreſſes his Happineſs that his Servants and Horſes were likely to be ſo uſeful to him; and he promiſes that the Watch ſhall be ſent as he deſires; and in ſpeaking of *Florentine*, recommends him as a good Man, who will counſel him for the beſt as to his Journey, which he is perſuaded will go on extremely well by *Luxemburg*.

On the 4th of *May* it appears by Sir *John*'s Letter to Lord *Crawford*, that though the Prelimina-
— 569. B. ries were in Fact ſigned upon the 30th of *April*, all that had tranſpired about them was, that a Suſpenſion of Arms was agreed between the Maritime Powers; ſo that the Roads were not yet opened.

On

On the 12th of *May*, though he could get no Paſſes, the Roads were apparently open, and the Day fixed for their Journey to the *Pais de Vaux* was the *Thurſday* following: He ſays nothing about the Route he propoſed to take; but to be ſure when it was open to him to chuſe, the direct Road, which lies by *Liege* through *Rheims*, muſt have been his Choice. P. P. 569. K.

Lady *Jane* wrote a Letter of the ſame Date to Mr. *Haldane*; in which ſhe expreſſes her Satisfaction in being about to go to a cheaper Place and *Proteſtant* Country. —— 539.

In the latter End of *April* Sir *John Stewart* writes to *Robertſon*, Banker at *Rotterdam*, through whoſe Hands their Annuity paſſed, to deſire he would furniſh him with Credit at *Geneva*, and aſſures him he ſhould ſet out from *Aix* the Beginning of the next Month. —— 601. F.

On the 3d of *May Robertſon* anſwered the undated Letter of Sir *John*'s, promiſing him Credit at *Geneva*. —— 601. K.

On the 15th of *May Florentine* wrote to Mr. *Andrieux*, his Correſpondent at *Rheims*, to take Care of them there; but in what Way, or in the Courſe of what Deſtination, cannot be collected, becauſe that Letter is loſt, and appears only in the Anſwer, dated the 22d, which ſpeaks of it only as not mentioning either the Time they meant to ſtay, or the Accommodation they wanted, or in any Reſpect the Kind of Care he wiſhed might be taken of them. The Letter not printed.

On the 18th of *May* Mr. *Khar*, a Banker at *Aix*, gave them Credit on the Widow *Taſſin* and Son, at *Paris*; and in his Letter to them he ſays, "The Lady will not go perhaps to *Paris*; but whenever "ſhe wants the Money, will ſend the Credit to ſome Merchant, to be tranſmitted to you, and will "draw upon you for the above-mentioned Sum, in the Whole or in Part, at Uſance, or a ſhorter Time "after Sight."——The Word *perhaps*, the Purſuers ſay, is a plain Proof that *Paris* had at leaſt been talked of as the Place of their Deſtination. How Mr. *Khar* might have expreſſed himſelf if he had ſtood in Awe of ſuch Critics, cannot be known; but to common Underſtandings it is a reaſonable Way for accounting for giving Credit upon a Houſe at *Paris*, to People who were not to go there to make Uſe of it: "She will not (perhaps) go to *Paris*, but ſhe will draw upon you," *&c.* —— 1003. C.

Put the *perhaps* where it ought to ſtand, in a Parentheſis, and there is an End of the Inference.

A Draught upon a great Houſe at *Paris* would paſs any where; on a ſmall Houſe in a Country Town might have found Difficulty beyond the Reach of it; and it was an obvious Convenience to have their Money as current as poſſible.

It is a ſtrange Argument that an accidental Expreſſion of Mr. *Khar* ſhould be ſuppoſed to convey their Meaning better than all their own Expreſſions, their Conduct, and that of their Friends, if the Expreſſion could be ſo turned: But that Mr. *Khar* did not mean it ſo, further appears from another Letter of the 29th of *May* to the ſame Houſe, where the Credit is changed to the Name of Sir *John Stewart*; and it is deſired, that when he ſhall *diſpoſe* of the Sum contained in it, they will honour *it*, which muſt mean his Diſpoſition, by Draught. —— 1034.

Is this remote Inference (no better than probable, to ſay the utmoſt) if it were otherwiſe ſupported, ſufficient to eſtabliſh the Fact of an imputed Purpoſe againſt the common Faith due to the Profeſſions of Men? The whole Proof which Accident has preſerved of their Conduct is inconſiſtent with ſuch Inference.

One of Lord *Crawford*'s Horſes was taken ill, and unable to make a Journey; and Mr. *Chauvan* had appriſed Sir *John Stewart* of the Difficulty of carrying Horſes through *France*: Therefore in a Letter of the 19th of *May*, he declines taking them. For as his Lordſhip's Motive for ſending them this Way was their Convenience, he thought it unjuſt to put that in Competition with the Safety of his Horſes.---He promiſes to ſend him another Letter at his firſt Halt, and calls upon him to perform his Promiſe of viſiting Lady *Jane* wherever ſhe happens to pitch her Tent. —— 570. G.

On the 21ſt of *May* they ſet out from *Aix* and arrived at *Liege*. Thus it appears, that till the Month of *May* they had not the leaſt Proſpect of the Road to *Geneva* by *Rheims* being opened; and that during this whole Period, the Place of their Deſtination was to go to *Geneva* by *Luxembourg*: That it was not till they had been detained much longer than they expected, and that the Roads were unexpectedly opened, that they thought of going by *Rheims*; which it appears they begun to conſider as a Place where they might ſtop in Caſe of Neceſſity.

CHAP. III.

Lady Jane's *Reaſons for not ſtaying at* Aix.

THE Purſuers ſay, She ought to have ſtaid at *Aix*, to have had the Company and Aſſiſtance of her Friends.——Why ſhe ſhould not lie-in at *Aix* is very eaſy to imagine:---The Congreſs and Seaſon were approaching:---She felt the Inconvenience of them already, thruſt down from

from better to worſe, into a little mean uncomfortable Lodging.---Her Friends were many, People of great Faſhion, to whom ſhe had not declared her Marriage; though it began to be rumoured
P. P. 41. A. as early as the Month of *February*, when ſhe took up the Purpoſe of going to *Geneva*.---The Meanneſs of her Lodgings made it impoſſible to receive ſuch Company upon ſo ceremonious an Occaſion.---The Expence would have been too great, if it had been otherways convenient; and the Awkwardneſs of taking Joy on Delivery and Marriage at the ſame Time was manifeſtly diſagreeable.

Theſe were Reaſons, ſpringing directly and manifeſtly out of her then Situation, and yet were not likely to be given, except to her intimate Friends: But if ſhe had aſſigned forty others to People in general, theſe muſt have been at the Bottom among the principal.

And yet the Purſuers argue, that ſhe muſt have meant fraudulently in leaving *Aix-la-Chapelle*; becauſe, they ſay, ſhe gave *other* Reaſons to different Perſons.---If they had been repugnant, it would have argued nothing, conſidering what real Reaſons ſhe had; but they are neither.

In talking of their Departure to Baron *Macelligot*, and perhaps, though ſhe does not ſay ſo, to
D. P. 352. D. Lady *Wigton*, the Expence of *Aix*, and the greater Facility of meeting good Aſſiſtance, are
—— 474. B. given as their Reaſons; which laſt, the Purſuers ſay, is falſe; for good Aſſiſtance might be had at *Aix*, and ſhe is reproached for not having conſulted them before: Therefore, what ſhe knew of the Skill of the *Aix* Midwives, does not appear any more, than what Occaſion ſhe had to try them. It is plain, the Baron teſtified no Surpriſe at their Expectation to find better Aſſiſtance; and whether that Reaſon alone would have determined them to go or not, it might add to their Satisfaction in the Place which they had choſen.

—— 34. B. The Purſuers inſiſt, that Lady *Jane* told Mad. *Tewis* that ſhe left *Aix* leſt her Marriage ſhould be known and give Offence to the Duke; which muſt have been falſe, as he knew it the 10th of *April:* For this they cite Colonel *Douglas*'s Depoſition, which is Evidence it ſeems for them, though not for the Defender.---Mad. *Tewis* aſked Lady *Jane*, Why ſhe concealed her Marriage and her Pregnancy? Her Anſwer was, She was afraid of loſing her Brother's Favour, and that he might withdraw her Penſion; and added, that the little Money ſhe had, made her unwilling to ſtay at *Aix* on Account of the Expence.---Lower down in the Page, Mad. *Tewis* is repreſented as preſſing Lady *Jane* to ſtay at *Aix*; and her Anſwer was, the Want of Money, and Fear of diſobliging the Duke, were her Reaſons for leaving *Aix*; to which ſhe alſo added an Objection to the Ceremony of receiving Viſits from ſo many of her Country-People.---In the firſt Part, the Fear of diſobliging the Duke is expreſsly referred to as the Reaſon for concealing her Marriage and Pregnancy, which was true as long as it could be concealed; and it is plainly but an abſolute Confuſion that they were jumbled together in the laſt Part.---It is very unlikely, that Mad. *Tewis* did not know of the Communication ſhe had made to the Duke, conſidering how intimate they were; but it is quite impoſſible ſhe ſhould underſtand that Lady
—— 30. B. *Jane* meant to conceal the Birth of her Child from his Grace for ever: And Sir *George Colquhoun*, who converſed oftener with Madam *Tewis*, and was preſent at the ſame Time, mentions the true Reaſon; The aukwardneſs of receiving Viſits from ſo many People of Rank, to whom ſhe had not declared her Marriage, as the Reaſon given Mad. *Tewis* for leaving it. But it is endleſs in ſuch a Cauſe as this to be criticiſing the Forms of Expreſſion, and debating on ſuch narrow Ground, an Article which, taken either one Way or the other, moves not a Hair's Breadth towards any Concluſion.

She ought, they ſay, to have lain-in at *Bedbour*; in ſhort, any where better than where ſhe did, or no where beſt of all. *Bedbour* was an old uninhabited Houſe of the *Comte De Salme*, approaching not a little nearer the Condition of a Priſon than a Palace; but in Lady *Jane*'s Opinion, any Thing was preferable to lying-in at *Aix* in her then Circumſtances. In the latter End of the Month of *April*, it appears by their Correſpondence with Lord *Crawford*, that the Buſineſs of getting Paſſes to go through *Luxemburgh* to *Switzerland* was laboured.---In Fact, they were not obtained before the Signing of the Preliminaries made them unneceſſary. About this
—— 486. G. Time Mad. *Tewis* knowing Lady *Jane*'s Reſolution not to ſtay, and probably, her Difficulty to get away, wrote to her Couſin, the Bailiff of *Comte De Salme*, to know whether Lady *Jane* might lie-in at *Bedbour*. Before agreeing to this Requeſt, it was neceſſary for him to aſk the Leave of his Maſter, and he wrote to him to *Vienna* for that Purpoſe; but it being uncertain when he might expect an Anſwer, they did not think proper to wait for it, but ſet out the 21ſt of *May* for *Rheims*. The Road being then open, either through *France* or *Luxembourg*, there was no Doubt which to prefer.

This Account the Purſuers lay aſide, and take no Notice of; but think they can make more
P. P. 30. C. of Mad. *Tewis*'s Converſation, as reported by Sir *George Colquhoun*, wherein ſhe is ſuppoſed to ſay, that Lady *Jane* was very happy in this Propoſal for ſome Days; but at laſt, *after every Obſtacle was removed* to her going there, Sir *John* inſiſted ſhe ſhould go to the South of *France*.

It

It is very conſiſtent with the former Account, that Lady *Jane* expreſſed herſelf happy. The Proſpect of leaving *Aix* was enough to raiſe that Demonſtration.—It is very likely alſo, that Sir *John* inſiſted on her going to the South of *France*, not as Mad. *Tewis* ſuppoſes, becauſe good Wine was cheap there; though ſuch a Circumſtance was likely to have its Weight with Sir *John*; but, becauſe ſhe was too far gone to wait the Iſſue of ſo uncertain an Event, as an Anſwer from *Comte De Salme:* For it cannot be true, that every Obſtacle was removed, conſidering it is in Evidence, that the Anſwer did not come till after their Departure; nor is it very likely, that ſhe ſhould ſo earneſtly perſuade Lady *Jane* to ſtay before that Anſwer did arrive.—Such Miſtakes are very natural where a Perſon relates what is ſaid upon any Subject, without knowing all the Circumſtances, eſpecially after an Interval of ſeveral Years. D. P. 486. c.

They ſay, that Colonel *Douglas*'s Account agrees with this.---Nothing like it---He only ſays, that Lady *Jane* ſeemed happy in the Propoſal of lying-in there, and Sir *John* perſuaded her off it---both which may be true; but he does not ſay every other Obſtacle was removed; and Mad. *Tewis* ſays, that no Anſwer was come.---Now ſuppoſe the Diſcourſe of Mad. *Tewis* told more accurately than any Diſcourſe ever was told fourteen Years after; What does it prove, but that Lady *Jane* really wiſhed to ſtay where ſhe was?---And by their own Argument it follows, that ſhe muſt have been really with Child.---Indeed, if Mad. *Tewis* is to be believed at all, ſhe was without Queſtion pregnant. After which, what will it avail whether ſhe went to *Bedbour*, or any where elſe? —— 34. B. —— 486. c.

Their Idea is croſſed by Lady *Jane*'s ready, and (as Mad. *Tewis* is now ſuppoſed to ſay) her joyful Acceptance of this Propoſal.---It looks prodigiouſly as if the Child, ſhe thought of palming upon the World, was as obtainable in this lonely Caſtle of *Bedbour*, as within the thronged Walls of *Paris*. But they have a Maxim for this; "Whatever may have been falſe, was ſo."- -Nothing was more *natural* than her Conduct about *Bedbour*, upon the Suppoſition of an Impoſture.---Their Plan was to go to *Paris* at all Events, to which Place it was eſſential to hold out an indiſpenſable Neceſſity of leaving *Aix*; and in the Execution of that Plan, it was *natural* to embrace the Propoſal of *ſtaying* with Joy; and thereby demonſtrate, they were under no Kind of Neceſſity to go.---What an Argument! It is natural to lie.---Her Conduct is natural---Therefore ſhe lies.---If every Term in this laborious Argument be juſt, it will turn to ſmall Account, unleſs they can encloſe twenty or thirty People more in the ſame Syllogiſm, and refer all they have ſaid, and all they have ſworn, to this ſame natural Trick of Lying.

As a further Proof of her fraudulent Purpoſes, it was aſſerted in their numerous Libels publiſhed in *France*, that "Elle ſe défait en paſſant à *Liege* d'un Domeſtique qu'elle avoit pris à *Aix-la-Chapelle*---"*Premier Témoin importune écarté.*" A ſtrong Circumſtance; conſidering that they appear to have been well ſatisfied with the Servant, by the Character they gave him at diſmiſſing him:---A Circumſtance ſo important, that it forms the whole Edge of the fourth Article in their Condeſcendence; and it was induſtriouſly charged that they diſmiſſed him at *Liege*, becauſe it was proper theſe cunning People ſhould ſeem to carry their whole Family away from *Aix*, and yet improper ſo important a Witneſs ſhould know any thing of them. Cond. 2.

Therefore it was publiſhed as a Badge of Fraud, in that infamous Libel their *Monitoire*, to all *France*, that they ſent back their Servant from *Liege*; and yet they had been at *Aix*, where his Wife lived; had even taken a Notorial Declaration from Mad. *Gilleſen*, who knew that *Quibel* had not followed them from *Aix*; and his Reaſon for ſtaying behind.

In Proof it turned out, that Lady *Jane* was deſirous to take him along; that Sir *John* was ſo fond of him as to offer to ſollicit his Diſcharge; repreſenting to him, that it would be eaſy, as he had not been announced a Deſerter, and would coſt but ſix Guineas; and that in Fact, his only Reaſon for not going with them, was, becauſe he had been a Soldier in the *French* Service, and had deſerted.---When this was fully detected, it was candidly given up; but the Death of a ſingle Witneſs would have enabled them in their Stile of Argument, to have kept Poſſeſſion of this Falſhood. It would have been ſaid, "She may have diſmiſſed him with a fraudulent Purpoſe; "therefore ſhe certainly did:---It is poſſible therefore it was ſo." D. P. 489. c.

CHAP. IV.

Conduct at Liege.

THE next Objection to her Conduct is, that ſhe did not lye-in at *Liege*, this happening to be the firſt Town ſhe met with on her Journey: And they are at great Pains to prove what excellent Midwives there were at *Liege*, and alſo that there are thirty-two Pariſhes in the Place, where Abundance of Children are ſuppoſed to be born. It is ſtrange the Defender ſhould not be born at *Liege!* Likely enough: But Lady *Jane*, who only paſſed through in her Way to *Rheims*, never learned one of thoſe curious Particulars, as to the extraordinary Fame of the Midwives. No P. P. 922. B.

Occaſion.

Occaſion occurred to talk of it; nor, if there had, is the Fact inconteſtible; for it is in Proof, that the Midwives in theſe provincial Towns were in nothing near ſo much Repute before they were brought to ſwear to their own Eminence.

To make this Objection look leſs ridiculous, the Purſuers aſſert, that their only Pretence for leaving *Liege* was the Want of better Aſſiſtance; whereas they know the Truth to be, that they never meant to ſtay there, nor ever talked of ſtaying.

The Purſuers here change their Attack, and ſay, that *Rheims* was now given out for a Blind to cover their real Deſtination to *Paris*, as *Geneva* had been before; and for this they found upon
rv. p. 8. c. the Evidence of Mr. *Hepburn*, who ſays, that Sir *John* told him Lady *Jane* was going to *Paris* to lye-in, and that *Paris* was the beſt Place to get good Aſſiſtance.

It will be proper to ſee the Extent of this Piece of Evidence, and then examine the Application of it. It appears by the whole Evidence, that by the Time of their Arrival at *Liege*, they had in a great Meaſure given up Thoughts of proceeding to *Geneva*, at leaſt till after the Delivery.---Thus Mrs. *Hepburn*, Chevalier *Douglas*, *Lambinet*, and indeed probably the Whole of their Acquaintances here, were told of their Intention of going to *Rheims*.

Sir *John Stewart*, in Converſation with the Chevalier *Douglas*, at a Tavern, ſaid, that he was about to take a Houſe at *Rheims*, where Lady *Jane* was to be delivered. The Chevalier adviſed him much to go to *Paris*, for the Sake of better Aſſiſtance. Sir *John* expreſſed his Inclination to this Idea, but was afraid he wanted Money.---Both he and Lady *Jane* told Mrs. *Hepburn* they
P. P. 340. B. were going to ſettle at *Rheims*: But Sir *John*, it ſeems, in Conſequence of the Chevalier's Advice, which had ſtartled him for the Moment, told Mr. *Hepburn* he was going to *Paris*; from which the Purſuers infer a ſettled Purpoſe of going to *Paris*.

But it is impoſſible to draw this Concluſion with any Air of Probability, That Sir *John* openly declared his Deſtination to *Paris* to Mr. *Hepburn*, at the very Moment they were induſtriouſly concealing it from Mrs. *Hepburn*, in a cool Hour, and which he ſuppreſſed from Chevalier *Douglas* over a Glaſs. Here alſo the former Queſtion recurs more ſtrongly, Why, if they meant to go to *Paris*, did they not avail themſelves of the Opinion which the Chevalier gave them, and which would at leaſt have given them a Colour, if they had wanted it? They were then in the Road to *Paris*; why not purſue it, inſtead of going a clear contrary Road? Why do they go to *Rheims*, in order to undergo the Neceſſity of Explanation? It is impoſſible.---It is ſaid, that they gave out not only theſe two Places, *Geneva* and *Rheims*, but *various* others; the *Pais de Vaux*, which the Purſuers will have to be a different Deſtination from *Geneva*; *the South of France*, in which they allude to Sir *George Colquhoun*'s Converſation with Mad. *Tewis*; where, after the Roads were open, and an Anſwer from the Prince of *Salme*, about *Bedbour*, looked uncertain, ſhe ſays, Sir *John* inſiſted to go (for no Reaſon ſhe can think of, but good Wine, by which ſhe plainly means Burgundy,)
D. P. 499. E. the Road to *Geneva*. *Montpelier*, one of the Places, which Mad. *Negrette* thinks fell from Mrs. *Hewit*, which Nobody elſe ſpeaks of, it is probable Mrs. *Hewit* never heard of; but what may have occurred to Mad. *Negrette* as a likely Place, if ſhe imagined they were going Southward.

To give out various Places as their actual Deſtination, could ſerve no Purpoſe but to multiply Queſtions, which, if a Scheme of Fraud had been intended, was ſurely their Intereſt to decline: And all for what? To cover a Deſtination which Nobody could have wondered at their chuſing.

CHAP. V.

Lady Jane's *Appearance of Pregnancy at* Liege, *ſaid to be affected.*

LADY *Jane* (they ſay) affected to ſhew herſelf with Child at *Liege*, which is another Proof that ſhe counterfeited it.—This is the firſt Time ſhe is charged with that Sort of Affectation, and ſhe is charged with it now only becauſe it is directly contrary to her Condition. She
D. P. 362. D. wore her uſual Dreſs, which covered her Pregnancy as far as it could be covered; in Conſequence of which, Mr. *Greme* does not remember to have obſerved it.

P. P. 992. G. The Landlady of the Houſe they lodged at remembers Nothing of the Perſon of Lady *Jane*, which, in another Place, ſerves for a Proof, that ſhe had not even thoſe Appearances. It is now ſuppoſed Oſtentation. The only Perſons ſhe ſaw were three or four *Britiſh* whom ſhe had known before; an old Servant and his Wife, who came to pay their Duty to her; and a Lady of her Acquaintance, to whom ſhe thought a Compliment due, in paſſing through the Place where ſhe reſided.

Thus a Tenor of Conduct remarkably even, and an Appearance altogether uniform, is attacked in four contrary Ways.—When her Pregnancy is obſerved, it was Oſtentation:—When not obſerved, though at the ſame Time and Place, there was not even the Appearance of it.—It

was

was downright impudent to allow the Maids, Mad. *Tewis* who took Care of her firſt Diſorders, and Mrs. *Hepburn*, who came in by Accident, to take ſuch familiar Obſervation of her ſwoln Breaſts and diſtended Belly: Lord *Crawford*'s was the Familiarity of an old and noble Relation, which ſhe could not help: It was myſterious Concealment that Mad. *Scholl* and *Gilleſen* her Landladies, and her Mantuamaker, *&c.* were not ſuffered to ſee her naked: And as the Pregnancy is commented upon for eight Months together, Time by Time, and Place by Place, as the Evidence of it happened to ariſe; theſe Arguments have the good Fortune to be often repeated, and much diſperſed; by which Means this Caſe is enough involved to puzzle any Body who has a Mind not to underſtand it; and this ſeems to have been thought ſufficient.

CHAP. VI.

Conduct at Rheims.

THEY ſet out from *Liege* the 25th, and arrived at *Sedan* the 27th, where, after ſtaying nine Days, they ſet out for *Rheims* on the 5th of *June*, where they arrived on the 7th; and next Day, the eighth, they entered to their Lodgings at the Houſe of Mr. *Hibert*.

Their Conduct at *Rheims* ſhows, that by this Time they had fully given up all Thoughts of going to *Geneva*, and that their determined Purpoſe was to ſtay at *Rheims* till after the Delivery.——On the 8th of *June* they took Lodgings at Mr. *Hibert*'s by the Month; on the ſame Day they wrote to Lord *Crawford*, the Letter is preſerved, appriſing him of their Arrival, and of Lady *Jane*'s Purpoſe to make Halt there for ſome Time, in reſpect of the Agreeableneſs of the Place, and her Reaſons againſt fatiguing Journeys, alluding to the intended Journey to *Geneva*; and concludes with requeſting to ſee him in his Way to the Waters of *Barege*, if it ſhould be neceſſary or agreeable after the Fatigues of War; referring to ſome Diſcourſe Lord *Crawford* had held of that Sort. And on the ſame Day he wrote to Mr. *Florentine*, informing him, that his Friend *Andrieux* had procured him good Lodgings, and given them good Wine; ſo that they would probably continue there for ſome Time.—They alſo requeſted Lady *Ilgton* and Baron *Macelligot* to come and live with them; and laid in Wine ſufficient to ſupply them for a long Time. It appears alſo that they wrote three other Letters at the ſame Time to *Aix*, but theſe were not preſerved.

— 901. D.

P. P. 572. R.

Letter in Proceſs, but not printed.

At *Rheims* the Purſuers aſcribe a different Conduct to Lady *Jane* from what ſhe is ſaid to have obſerved at *Liege*; there ſhe only affected to appear big with Child to particular Perſons.—When ſhe went to *Querengal*'s, ſhe put on the Appearances of a far advanced Pregnancy; but at home, where it was not eaſy to carry on theſe Appearances for ſo many Weeks, that is to ſay, *for three Weeks*, ſhe makes no Shew of it, but is conſtantly dreſſed ſo as to conceal her Shape.——The Abſurdity of this Idea is only equalled by its Falſhood: After keeping up a conſtant Appearance of Pregnancy for three Months as the Purſuers ſay, for eight as the Witneſſes ſwear, ſhe dropt it the laſt three Weeks, that is to ſay, when it was moſt eſſential to her Fraud.——Impoſſible! And, in Fact, the Notice which Abbé *Hibert* took of it was in her own Apartment, and when ſhe was in an Undreſs.—The Depoſitions of the Witneſſes to her Pregnancy at *Rheims* are as direct as thoſe at *Liege* or *Aix*, ſo far as they had Opportunities of obſerving her:—And if ſuch Conduct were not of itſelf abſolutely impoſſible, how could Lady *Jane* have deceived *Effy Caw*, by ſuch a Conduct as theſe Purſuers are obliged to aſcribe to her.

That ſhe employed no Phyſicians, Surgeons, *&c.* at *Rheims*, proves ſhe did not want them; that is to ſay, proves her to be in the Condition of Ninety-nine Women of an Hundred in the ninth Month.

It is further ſaid, ſhe ought to have lain-in at *Rheims*, for there was admirable Aſſiſtance there, which ſhe might have known if ſhe enquired; and that it is falſe to pretend ſhe was told otherwiſe.

To prove the firſt of theſe Propoſitions, they have examined a Surgeon who did not live there at the Time, and a Phyſician who was then twenty-ſeven Years old, and did.——They ſwear in the ſame Form of Words, that eleven Surgeons lived there, of whom two only practiſed Midwifery, ſo that the other nine were as much to this Purpoſe as the ſame Number of Bricklayers in *Rheims*. There were alſo five Women-Midwives, of whom two, *Thomas* and *Renniſon*, principally enjoyed the public Confidence:—The Surgeons practiſed, and the Women enjoyed the public Confidence.—— This ſeems to be a pretty exact State of their Credit. Mad. *Maillefer* ſays, ſhe employed *Thomas*, and had heard of one *Henrietta*, but did not know her, nor did any of her Acquaintance: She knew nothing of the reſt; and that the Town

P. P. 924. B.

P. P. C

was ill enough ſerved in this Reſpect, theſe Accounts agree, and have received no Con-
D.P. 525. F. tradiction; for Mr. *Andrieux* only ſays, that there were many Phyſicians and Surgeons who were very ſkilful Gentlemen. Perhaps ſo; but what has that to do with Midwifery? Perhaps the Purſuers were aſhamed to aſk what a Boy of nineteen remembered of the Skill of Midwives in 1748.——But the Rate of Eſteem which the Midwifery in the provincial Towns of *France* deſerves, may be judged of by the Depoſition of Mrs. *Gordon*, who actually
—— 373. E. loſt two Childern at *Sens*, the Capital of the *Lionnois*, an Archbiſhopric, and a City containing
—— 576. ſixteen Pariſhes, by the Unſkilfulneſs of the Midwife, and was obliged to go to *Paris*, at great Expence, to lye-in of a third; and from the Depoſition of Mr. *Gordon*, who juſtly thought the Neglect of ſuch an Article in Police, a fit Subject to complain of to the Archbiſhop, and
—— 377. C. Chief Magiſtrate. And in converſing with Mrs. *Leſlie*, who was brought to-bed at *Rheims*, of the Misfortunes which had happened to his Wife; Mrs. *Leſlie* told him it was the ſame Thing in all the provincial Towns in *France:* That ſhe had been ſo ill ſerved at *Rheims* in that Reſpect, that it was owing only to the Goodneſs of God ſhe did not meet with the ſame Misfortune.

It was therefore at leaſt *poſſible* ſhe might have been told otherwiſe, if Length of Time and Mortality has not left the fulleſt Evidence, which might have been had of it more recently. They might have been adviſed to go to *Paris*; for *Le Chevalier Douglas* did adviſe them ſo before they came to *Rheims*. Mad. *Andrieux* certainly gave her that Advice; but ſhe is dead. Her Son, no Wonder, remembers nothing of ſuch Advice; but the Purſuers know that the Father, whom
—— 525. F. they imprudently examined in the *Tournelle* for the Sake of another Hypotheſis which broke under them, did remember his Wife's Anxiety for Lady *Jane*, with whom ſhe was intimately connected, and could have given a large Account of many Things relative to her. *Iſabel Walker* ſays that
Min. 6. K. Mad. *Andrieux* told her, that Lady *Jane* had enquired, as was natural, after the Skill of the Midwives; and that ſhe had told her there were no Perſons of great Skill; and that Perſons of Condition either went to *Paris*, or ſent for a Midwife: And thoſe who wanted to ſave their Money, went there privately, rather than ſend for one.

P. P. 251. G. Mrs. *Hewit* ſays, that Lady *Jane* interpreted Mad. *Andrieux*'s Converſation to this Effect: They were as ignorant as Beaſts in this Reſpect; and that ſhe herſelf, in the Birth of one Child, had contracted a Diſeaſe which rendered her incapable of bearing more. And Mrs. *Hewit* had heard that ſhe died of it. The Rumour ſhe ſpeaks of at laſt was not true; ſhe died of an Apoplexy in 1759: But it was no Part of the Story of 1748.

But the Purſuers ſay the reſt is alſo falſe; for *Florent Andrieux* remembered the Birth of the laſt Child, and never knew or heard of her being brought ill to-bed.---Remember it! he was quite a Child; he could know nothing of what befel her then, and there are a thouſand Probabilities that either a Boy or a Man, he ſhould not be talked to on ſuch a Subject ſo long paſt and over.

After the Reſolution was taken of going to *Paris* in Conſequence of Mad. *Andrieux*'s Advice, they were as open and explicit in declaring it, as they had been explicit before to all their Friends in mentioning their former Deſtinations. It was wrote to Baron *Macelligot* and Lady *Wigton* then at *Aix-la-Chapelle*, where Lady *Jane* had many Acquaintances, with whom they were intimate. It was wrote to Mr. or Mrs. *Hepburn* at *Liege*, where many of their Countrymen alſo lived. It was publickly told to Lieutenant *Mackenzie* and *Mac Lean* ſeveral Days before they ſet out.

At what particular Time the Advice was given is not certainly aſcertained, nor could it be expected. Mrs. *Hewit* in a looſe Expreſſion ſays, it was three or four Days after their Arrival at *Rheims*. What Space of Time after ſo many Years, her Memory may have marked by that Deſcription, muſt remain uncertain: When they came to the Reſolution of going, is marked only by accidental Expreſſion, as accidentally preſerved in Mind. That it was not till after the Middle of
D. P. 515. E. *June*, looks probable from Sir *John*'s reſorting to Mr. *Querengal* about his Trunks at *Torcy*, without mentioning it. But that it muſt have been ſoon after, and alſo that it was immediately avowed to every Body, is plain from many Circumſtances. As early as the 24th Lady *Jane* is ſaid to have
P. P. 908. C. told Madame *Sautrez* ſhe muſt have her Gown done immediately, for ſhe was going away: And allowing Madame *Sautrez* to be as miſtaken in this Article of converſing with Lady *Jane*, as ſhe doubtleſs is in many other Particulars, it proves that ſhe remembered their going was talked of as early as the Time of widening the Gown. Mr. *Mackenzie*, who was acquainted with them but ten
D. P. 53. E. Days before they left the Place, remembers being told by Sir *John* within two or three Days of his
—— 54. B. firſt Acquaintance, that ſhe was going to *Paris* to lye-in. Mr. *Andrieux* ſays, that *ſome Time after* Lady *Jane*'s Arrival ſhe employed his Mother to procure Child's Cloaths, telling her ſhe was going
—— 64. B. off to *Paris* immediately to be brought to-bed. *Some Time after* is a very general Expreſſion; but it is extremely probable that it muſt have been earlier than their talking of it to Mr. *Mackenzie*, not only from the Time neceſſary for making ſuch Things, but from the Degree of Intimacy and Confidence which employing her in that Manner beſpeaks: And this very Circumſtance of her open and unreſerved

reſerved Communication to Perſons of great Worth and good Character, with whom they had an accidental Connection, proves pointedly that ſhe was in a Situation in which ſhe could have nothing to hide. Would any Body who meditated an Impoſture draw ſuch Obſervation upon her, and open herſelf to it in this Manner? And yet theſe are the Circumſtances under which the Purſuers find themſelves driven to argue that " ſhe had laid aſide the Appearance of Pregnancy at *Rheims*."

Add to this, that the Length of Time which they actually did ſtay before they went or thought of going to *Paris*, is inconſiſtent with the Imagination of a preconcerted Purpoſe to go there. No one Reaſon, conſiſtent with the Idea of a Fraud, can be given for it. On the contrary, the Purſuers ſuppoſe her to be very tired of Counterfeiting. The Pretence of getting better Aſſiſtance, would have been as much at Hand the firſt Week as the third. Every Motive ariſing from Fraud would have carried them off directly.

CHAP. VII.

Of the leaving the Maids at Rheims.

THE next Article in Lady *Jane*'s Conduct from which the Purſuers think that they have collected ſtrong Preſumption of Fraud, is her leaving the Maids behind her at *Rheims*: For if it was ſo neceſſary to keep them conſtantly about her, as ſhe had done for two Years, to part with them at ſuch a Time, now they became peculiarly neceſſary, muſt be only to get rid of Witneſſes, when ſhe was about to commit an Act which would not bear the Light; and this is further manifeſt from her giving a falſe Reaſon for it, the Want of Money.

After torturing this Circumſtance for ſix Years together, to get rid of Witneſſes is the only fraudulent View their Imagination can ſuggeſt: If they could have been corrupted and made Witneſſes, Fraud would have been glad, no Doubt, of ſuch Aſſiſtance.

But the Purſuers muſt be conſiſtent, and ſuffer the ſame Idea to go through the whole Argument, in which Caſe at leaſt two unexceptionable Witneſſes muſt be allowed to have proved a Caſe which is atteſted by many more, and which, if true, ſhuts out every Suſpicion of Fraud. If ſhe was really big with Child when ſhe went to *Paris*, ſhe could have no Fraud to hide.---Theſe Maids, among other Witneſſes, had ſuch Opportunities to know, and have ſo pointedly deſcribed and aſcertained their Knowledge of the Pregnancy, that unleſs they are *proved* to be perjured, there is an End of all Doubt about it: Indeed there is an End of the whole Queſtion.

Aware of this unavoidable Concluſion, the Purſuers ſay (even though they cannot prove it, but they muſt ſay it to keep their Cauſe from ſinking at once) that *Iſabel Walker* was more than perjured; ſhe was an Accomplice. And did they leave behind an Accomplice? And ſuch an Accomplice, ſo ſenſible, ſo clever, ſo ſteady, that no Length of Examination could ſhake her in a ſingle Article, though ſhe had given the moſt explicit Account upon the Service, and afterwards underwent two minute circumſtantial Examinations by the Purſuers, and at Length was examined in open Court for two Days ſucceſſively, by Judges who tried her Veracity by all Manner of Queſtions? And her Behaviour in the Eſteem of every Bye-ſtander ſupported her Teſtimony, as much as Truth could be ſupported by the Fairneſs of a Witneſs's Appearance.---If ſhe were falſe, it is but the more inconceivable that ſuch an Accomplice ſhould be left behind.

The Purſuers are ſenſible of this, but they have another Qualification for it.---She was left behind to keep *Effy Caw* Company; for there could have been no Pretence to carry one which would not have applied to both.

By the Account of the Purſuers themſelves, it was impoſſible they ſhould both go that Week, there being but one vacant Place in the Coach.---If one muſt be left, *Iſabel*'s Age gave her an undoubted Title to go; and when *Effy* was once left, they muſt have been barren indeed to find no Reaſon for keeping her there till they could come back.

But upon what Ground is *Effy* called a Dupe? Only becauſe ſhe is dead.---As long as ſhe lived, ſhe ſpoke not ſo particularly, ſhe was never ſo examined, but as deciſively to the Pregnancy, as *Iſabel*.---The Purſuers found the Difference upon two Articles.---The firſt, an Averment, that *Effy* was a Girl of eighteen; which, by an Accident very common to their Averments, turns out to be falſe: She was in her twenty-ſecond Year *.---Secondly, on *Iſabel*'s general Account of their Employments, *viz.* That ſhe put My Lady to Bed, and took her up, and that *Effy* put on her Robe, and dreſſed her before Dinner: Upon which, forbearing to aſk the Queſtion for Fear of the Anſwer, they thought it better to conclude, in the Way of Argument, that *Effy* was cautiouſly and conſtantly

* Extract of her Baptiſm mentioned in a Petition ſubjoined to the Defender's Memorial.

ſhut out at thoſe critical Times of going to Bed and riſing; whereas *Guenet*, their own Witneſs,
P. P. 896. A. proves, that *Effy* went in to put her to Bed when ſhe was ill at *Rhetel*; and *Scholl*, *Gilleſen*, and the
D. P. 473. D. *Hiberts* ſpeak of them both as going into the Room before ſhe was up, and at her going to Bed: And
—— 476. F. Madam *Tewis* heard the firſt Symptoms from both. Nay, the Purſuers have taxed her with inventing
—— 485. G. a Lie to excuſe Lady *Jane*'s leaving *Rheims*.

But giving the Purſuers all their Ground upon this Subject would undo all their negative Argument, from their Witneſſes not having ſeen her Bulk.---Was ſhe tired of the Trouble of counterfeiting at *Rheims*? Did ſhe lay the Appearance by, eſpecially at Home, ſo that Madame *Sautrez*, *Hibert*, &c. &c. remarked the Want of them, though ſhe wore that Engine of Concealment an Hoop? And was *Effy* impoſed on, who put on that Hoop, and dreſſed her all but her Stays and Petticoat?

But without hampering them in their own Contradictions, *Effy*'s being impoſed on by a fictitious Bulk of ſuch a Size as the Witneſſes ſpeak to, is in every View ſo impoſſible as to render the Conceit ridiculous; and if ſhe had a Fraud to practiſe, ſhe would have diſmiſſed her the very Moment ſhe thought of it:---A Meaſure which her Circumſtances did ſo juſtify as to leave her in Want of Apology for keeping her at all. Two Maids, one to dreſs her at one Hour, another at another, was no Part of her Situation, if ſhe had a Moment's Turn to Frugality.

Serv. 10. B. The Purſuers have great Occaſion, indeed, to prove this Woman moſt effectually deceived; for Lady *Jane* was ſo bold an Impoſtreſs as to turn her away with Pique, though ſhe could have ruined her the next Moment.---At any Rate, this was a very confident Meaſure, which nothing but the firmeſt Conſciouſneſs of Innocence would have admitted.

But, convinced how perfectly impoſſible the only fraudulent Motive is which they can aſſign, they ſay they are under no Neceſſity to aſſign any. This is ſtrange Language in the Mouth of an Accuſer.---Surely every Paſſage in Lady *Jane*'s Conduct, to which no bad Motive can poſſibly be imputed, muſt be held innocent.

The Reaſon given for this is as logical as the Propoſition itſelf is juſt.---It is ſufficient to ſhew, that ſhe might have an Intereſt to leave them if ſhe was not with Child (the conſtant Argument ſhe *might*, therefore ſhe *did*).---That Intereſt in leaving them is the very Thing they have been labouring in vain to ſhew; and it is the only Medium by which they have tried to aſſign a fraudulent Motive---which they excuſe themſelves from *ſhewing*, by alledging, that it is not incumbent on them to ſhew it.

The other Hypotheſis to which they have reſorted, ſhould not be forgot.---The Maids were left behind to avoid the Danger of a Diſcovery by ſo large a Company. The Danger of Diſcovery was certainly great enough to have put them upon uſing a very different Degree of Caution than they did in the Article of going with a Recommendation of Mr. *Maillefer*, to a Houſe of Communication with *Rheims*, where they were to carry the Children back; eſpecially if leaving the Maids was a Circumſtance of Suſpicion. But it is not eaſy to ſee how carrying them would have encreaſed the Danger: Beſides, this preſuppoſes both to be Accomplices, which they deny.

But they further urge, that the Defender can give no good Reaſon for leaving the Maids.---Suppoſe, at the End of ſeventeen Years, it ſhould be impoſſible to trace the real Motives; nay, if Conjecture itſelf is flung behind, is it not enough for the Juſtification of their Innocence, that it is impoſſible to aſſign a bad one?

What Motives there may have been, ariſing from their Situation and Circumſtances, for any Part of their Conduct, can never be known or judged, without having, what the Evidence does not afford, an accurate Survey of that Situation, and an exact Account of thoſe Circumſtances.

—— 12. A. In the preſent Caſe, all that the two only Witneſſes, Mrs. *Hewit* and *Iſabel*, remember, is very
—— 19. G. general,---That they were in Want of Money: And they recollect no other Reaſon but that, for the
P. P. 344. C. Maids being left. Mrs. *Greig* heard it ſaid, that it was both for Want of Money, and to avoid the Expence and Appearance of being thought People of Faſhion, by ſo many Servants.

The Purpoſe of Lady *Jane*'s Journey was merely that which had been ſuggeſted to her by Madame *Andrieux*, as the uſual Recourſe of Perſons in her Situation to ſave the Expence of ſending for a Midwife by going privately to lie-in. She did not mean to live in any Faſhion, to ſee any Company, or to form any Eſtabliſhment.---The Maids, therefore, were ſo far from being what the Purſuers call peculiarly neceſſary, that the only Perſons peculiarly neceſſary were Nurſes, Midwives; and the Maids, or one of them, might have been uſeful before ſhe was brought to-bed, and after ſhe got up again; but in the intermediate Time, far from neceſſary.---Her Reaſon for diſpenſing with the
Serv. 19. G. Uſe of them before ſhe was brought to-bed was the Want of Money.---Afterwards, and when ſhe had received a Supply, ſhe meant to ſend for them.---The Maids, alſo, had as much a Mind to

come

come to *Paris* as Lady *Jane* had to ſend for them; but knowing her to be ſtreightened in her Finances, and conſidering a Nurſe as the propereſt, and indeed the only neceſſary Attendant, *Iſabel* herſelf wrote to Mrs. *Hewit* to deſire ſhe would put My Lady off from doing it; and when the Doctor declared it neceſſary for her Health to go into the Country, it became altogether ſuperfluous Expence and Trouble.

This is the uniform and concurrent Account of Mrs. *Hewit* and *Iſabel*.---Mrs. *Hewit* relates that Lady *Jane*'s Delivery made it unneceſſary to ſend for them: So it did, unleſs ſhe meant to ſtay at *Paris* after her Recovery.---*Iſabel* accounts for her not ſtaying and ſending for them by the Doctor's Advice.

CHAP. VIII.

Of Sir John's *Supply of Money from Mr.* Andrieux.

THE State of Sir *John*'s Caſh, upon arriving at *Paris*, was exactly a Louisd'or left beyond the Expence of the Journey. P. P. 1034. H.

The Purſuers ſay this is falſe. He had the Credit for 1979 Livres; and they remark, frivolouſly enough, that the Expence of carrying the Maids in the Coach (where they could not go) was twenty-four Livres; on the Outſide, fourteen Livres.---The firſt, however, being all the Money he had in his Pocket, it would not have been ſufficient to have carried them to *Paris*, as they muſt have been maintained on the Road, and their Expence at *Paris* would have been much more conſiderable than by going by themſelves. —— 890. H.

But ſtill he might have diſpoſed of this Letter of Credit at *Rheims*, and have put 80*l.* into his Pocket, which would at leaſt have carried the Maids to *Paris*. Perhaps he might; and perhaps he might alſo foreſee that he ſhould want more; and he might think, that a Letter of Credit for 80*l.* carried Whole by himſelf, would open ſuch a Communication with the Houſe it was given upon, as would engage them to advance more.—If he might have thought ſo, it is enough, in ſuch a Caſe as this, where it already appears his Motives, whatever they were, muſt have been innocent.—But it is in Proof that he did think ſo: He received the Money on the 5th, and immediately applied for more upon his Draft for it, which was refuſed; whereupon he obtained 600 Livres from Mr. *Andrieux*. What his Engagements and Wants were at *Paris*, it is now impoſſible to know; but they ſeem to have been immediate on his coming there.---On the 5th he received at once 1650 Livres, a large Part of the Whole 1979, and looks as if it were uſed to ſatisfy ſome Call unknown, immediately, eſpecially as he took up the reſt the next Day, which was a Sum juſt ſufficient to go on with their ordinary Expences.

They further ſay, that Mrs. *Hewit*, and *Iſabel*, and Sir *John*, do appear plainly to have combined in a Falſhood; namely, that the Money advanced by Mr. *Andrieux* was received on the 10th of *July*, the Day of the Delivery, when they muſt all know it was not received till the 26th. —*Iſabel*, in particular, knew the Falſhood of this Story, but ſwore it wilfully to ſupport Mrs. *Hewit*; for ſhe remembered, at the ſame Time, ſhewing their Boxes to Mr. *Andrieux*, to induce him to give them Credit. Decl. 3. A. Serv. 12. B. —— 20. B.

When they have ſtated this Combination in the moſt exaggerated Manner, they really do not know how to apply it; nor do they even attempt to aſſign one fraudulent Motive; as an Apology for not ſending for the Maids the Truth would have done better.---As to marking the Date of the Child's Birth, they had done that ſufficiently by all their Letters and Converſations; and it would have been ſtrange indeed to remember a more material Circumſtance by a leſs: But their Way is to hang upon every Miſtake which human Memory cannot ſtand againſt, after ſo many Years Interval, as if it were criminal; although, from the abſolute Want of any aſſignable Motive, it is proved innocent.

Nor is this the moſt obnoxious Part of their Arguments.---They think themſelves at Liberty to draw the ſame injurious Concluſion from Cavils upon Words; and call a Witneſs perjured, if the Slip be only Inaccuracy of Expreſſion.

1ſt. Sir *John*'s Application to his Banker was certainly at the Time he preſented this Bill, which was the 5th; and if, as he ſays, upon their Refuſal he wrote to *Andrieux*, his Letter would be received on the 7th, at latеſt.---It is certain that he received Letters from *Scotland* on the 10th in the Morning, which came from *Rheims* on the 8th. In Mr. *Andrieux*'s Letter of the 18th, he ſays Nothing of this Money, but refers to a former Letter, which Sir *John* certainly received on the Morning of the 10th.--On the 24th the Bill was ſent; therefore it is morally certain that

that *Andrieux*, having written both on the 8th and 18th, and having made him no Anſwer to his Requeſt in the laſt, muſt have taken Notice of it in the firſt; and as the Bill came on the 24th, it is plain the Anſwer of the 8th muſt have been an Aſſurance of aſſiſting them.

Sir *John* therefore ſays, that on the 10th the *Credit arrived*, meaning the Aſſurance Mr. *Andrieux* gave him of the Money. Mrs. *Hewit*, when ſhe firſt wrote to *Iſabel Walker*, told her a *Supply* was got; which is a more general Way ſtill of ſtating the ſame Fact. The Aſſurance of having a Supply, when ſhe came to be examined thirteen Years after, ſhe confounds the Time of receiving the Money with the Circumſtance which gave them equal Satisfaction, receiving the Aſſurance of it. Lady *Jane*, on another Occaſion, expreſſes herſelf in the very ſame Manner: She applied to Lord *Morton*, in *September* 1749, for the Loan of 350 *l.* his Lordſhip wrote her that he would ſend her Credit for that Sum; on Receit of which Letter, her Ladyſhip wrote him, on the 29th of *October*, returning Thanks for ſending her Credit; and the whole Family date the Receit of Lord *Morton*'s Money in *October* 1749, when his Letter promiſing it arrived; though the Credit did not arrive till the 2d of *November* after ſhe had wrote to Lord *Morton*.

This is the true Account of the Conduct at *Rheims*, as it is ſworn to by the only Perſons who could know it to be ſo. But what is it to the Defender whether it be or not? If a criminal Purpoſe cannot be imagined for their Conduct, is he obliged to go farther, and prove which of all poſſible harmleſs Motives was that which influenced it? At that Rate it would be quite unlucky to remain unſuſpected too long, and Acquieſcence would turn to the Prejudice of uninterrupted Poſſeſſion. This is a much harder Caſe than the former, of turning off *Quibell*. There the Purſuers could imagine a criminal Reaſon, and loudly aſſerted it, till Accident convicted them of Falſhood.—Here they deſire to find Lady *Jane* guilty, without being able to ſtate the Crime!

CHAP. IX.

Of the Journey from Aix *to* Paris, *and Mr.* Maillefer's *Letter to* Godefroi.

THE next Objection is, That it was inconſiſtent with Lady *Jane*'s Condition to travel ſo long a Journey as from *Aix* to *Rheims*, and from that to *Paris*, in the eighth or ninth Month of her Pregnancy; and to ſet out from *Rheims* ſo early in the Morning of the 2d of *July*, without going to Bed.

The Journey from *Aix* to *Liege* was about twenty Miles, where ſhe reſted three Days; that from *Liege* to *Sedan* took up three Days, and is not above ſixty or ſeventy Miles, where ſhe reſted nine Days; and from *Rheims* to *Paris* about the ſame Diſtance. The Roads over, what the Purſuers call the Mountains, of the *Ardennes*, is nothing like ſo bad as they are repreſented. The Purſuers ſay they are ſteep; but this is not attended with Fatigue to thoſe who travel in the Machine; and all the reſt of the Road is preferable to moſt Poſt-Roads in *England*. No Carriages are eaſier than the *French*, and ſurely none move ſlower. It was in the Month of *June* and *July*, when travelling in the Night is to be preferred; and lying down in her Cloaths inſtead of going to Bed, before ſetting out for *Paris*, was certainly not Matter of additional Fatigue. What was there in this, more than a Woman in the ninth Month may be ſuppoſed capable of, and in ordinary Experience do? But what ſhews it was not a Circumſtance either to create Suſpicion, or on which it can be founded is, that thoſe who knew of that Journey, and could compare it with the Time of her Delivery, when theſe Circumſtances happened, never on that Account entertained the leaſt Suſpicion. Every Perſon's Recollection may furniſh them with many Inſtances of Ladies of the higheſt Faſhion in *England*, who have come to *London* from much greater Diſtances, within a Fortnight or three Weeks of lying-in.

The laſt Objection which the Purſuers Anxiety has ſuggeſted to them on this Part of the Caſe is---That Mr. *Maillefer*, in a Letter which he wrote to *Godefroi*, told him, that a *Scotch* Colonel and two Ladies were to go to *Paris* by the *Rheims* Coach, which was to arrive on *Thurſday* the 4th: That he had recommended them to *Godefroi*'s Houſe: That he does not know if it will be for any Time, for he believes they mean to take an Apartment for themſelves: But the Favour he has to aſk of him is, to wait their Arrival at the *Barrier*, and prevent their Things from being carried to the Cuſtom-Houſe, which would be troubleſome.---After which he adds, as he will have Things to buy at *Paris*, "I have told him he may apply to you as a Connoiſſeur, who will not let him be "cheated."---Upon this Paſſage, which makes a Part of nine Letters of Recommendation out of ten, thrown in after he had explained what the Favour was he demanded, the Purſuers ſeriouſly argue, that Sir *John* held out the Purchaſes he had to make as the only Reaſon of going to *Paris*, to cover his real Purpoſe; whereas it is clear the making Purchaſes was a probable Accident, and mentioned only as ſuch.

It

It is ſingularly hard, that the Defender ſhould be obliged to ſtate and anſwer ſuch abſurd Objections as the Purſuers at every Turn inſiſt on; and that they ſhould impute a fraudulent Intention to Sir *John*, without allowing him ſome Underſtanding to conduct it.—It is not denied that every Perſon in *Rheims*, with whom Sir *John* was acquainted, knew of his Purpoſe in going to *Paris*; Mr. *Andrieux*'s Family, *Querengal*, *Maclean*, *Mackenzie*, *Mailleſer*, and *Macnamara*, and Mad. *Mayette*.---It is not denied that it was wrote to *Liege and Aix*.---It is certain they meant to return to *Rheims* again, for their Servants were left.---Is it therefore poſſible that Sir *John* would have invented a Falſhood to *Mailleſer* alone, in which he would have been detected the firſt Moment he ſtept to the Coffee-Houſe, where Sir *John*'s Acquaintance and his reſorted? It is impoſſible.

Theſe are the whole Objections to the Conduct of the Defender, during the nine Months of his Mother's Pregnancy: They have been conſidered more particularly than many of them deſerved; but as they were urged by the Purſuers, to affect the Credibility of ſo deciſive a Fact as the Pregnancy of Lady *Jane*, and of Courſe to fix Perjury on ſo many Witneſſes of Rank and Character, it was unavoidable.---The Reſult from the whole of their Conduct is---That Lady *Jane*'s Pregnancy was obſerved as early as *November* 1747: That at this Time, and long after, there was no Proſpect of her getting to *France* on Account of the War.---That her unfeigned Purpoſes was to have gone to *Geneva*, by the Advice and with the Approbation of Lord *Crawford*: That this Journey was delayed ſolely on Account of the Difficulty of procuring Paſſes.---That even at the Time ſhe informed the Duke of *Douglas* of her Marriage, and that ſhe was with Child, there was not the leaſt Proſpect of a Peace, or of her getting to *France*.---That on the Preliminaries being ſigned, and the Roads open, they ſtill perſiſted in their Plan of going to *Geneva*, and only varied their Road; and propoſed to go by *Rheims*, the direct Coach-Road, inſtead of going by *Luxemburg*.---That on or before their Arrival at *Rheims* they found that Lady *Jane* was unable to make out the Journey to *Geneva*, and therefore propoſed to remain at *Rheims* till after the Delivery. They continued in that Reſolution for ſome Time, and requeſted Lord *Crawford* to come and ſee them there; and both before leaving *Aix*, and after they had ſettled at *Rheims*, requeſted Lady *Wigton* to come and live with them at *Rheims*; and that when they were afterwards adviſed to go to *Paris*, on Account of the Unſkilfulneſs of *Accoucheurs* and Midwifes, they told it uniformly to all their Acquaintances at *Rheims* and elſewhere.---Their Behaviour therefore throughout was open and candid; and, ſo far from inferring the leaſt Suſpicion of a Fraud, is abſolutely inconſiſtent with the Poſſibility of any Fraud having been in their View at the Time.

CHAP. X.

Of Lady Jane's *being deceived by falſe Symptoms of Pregnancy, or having miſcarried.*

THE Purſuers have examined two Phyſicians and two Surgeons, to prove that all Marks of Pregnancy are equivocal; of Conſequence that Pregnancy is a Thing incapable of direct and poſitive Proof. By inſiſting on this Sort of Proof the Purſuers admit, (what indeed no Thanks are due to them for) that their Objections, founded on the Teſtimony of their Witneſſes who did not obſerve Lady *Jane*'s Pregnancy, are immaterial, and that her Conduct was conſiſtent throughout.---For if her Appearances of Pregnancy was ſuch as to deceive herſelf and others, her Conduct would moſt certainly have been conſiſtent with her own Belief, as it certainly was.---But the Uſe they have made of theſe Depoſitions in Argument is, that when a Witneſs ſwears to Lady *Jane*'s real and unaffected Bulk, when ſeen or felt without her Cloaths, is, that the Doctors have ſaid theſe Appearances may have been fallacious. And if a Witneſs is found who ſaw Lady *Jane*, and did not obſerve her Pregnancy, they forget the Argument of Deception, and inſiſt that ſhe had not the Appearance of Pregnancy; and thus the one-half of their Argument is directly repugnant to the other.

But theſe Phyſicians are not ſo hardy as to exclude the direct Proof of Pregnancy, though they reckon the common Marks of Pregnancy taken ſeparately to be uncertain. Yet they allow the five following Marks, taken collectively, to be a full and unerring Proof of Pregnancy: Theſe Marks are ſtated in the Depoſition of Doctor *Young*, the only Phyſician of practical Knowledge in Midwifery, who has been examined; and are---Sickneſs and Reachings.---*Suppreſſio Menſium*.---The Breaſts ſwelled, the Belly gradually increaſed in Bulk, and perceptible Motions in it—every one of which are directly proved in this Caſe, by a much greater Concurrence of credible Witneſſes than could have been expected. And Doctor *Young* ſays, that he never did heſitate in ſuch a Caſe to declare the Woman *pregnant*.---So that, by the Teſtimony of their own Witneſſes, Lady *Jane* was moſt certainly pregnant.

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The Purſuers, after being forced out of this Syſtem of a Deception, by the Teſtimony of their own Witneſſes, in the laſt Place have inſinuated, that though pregnant ſhe may have miſcarried; but they have not been pleaſed to bring the leaſt Proof of this, or aſſign any Time or Place for ſuch Miſcarriage, only that ſhe may---*therefore* ſhe *did*.

It is ſcarce poſſible to make a ſerious Anſwer to *may-be's* of this Nature, unſupported by the leaſt Shadow of Evidence. The Defender maintains, that as his Mother's Pregnancy is proved by clear and poſitive Teſtimony, and his Parents have uniformly declared that the Defender is the Offspring of that Pregnancy, he muſt be maintained in the Poſſeſſion of that *State* which he has enjoyed ſince the Day of his Birth, unleſs the Purſuers could have brought direct Proof of her having miſcarried.

PART IV. BOOK I.

ALIBI at GODEFROI's.

CHAP. I.

Of the Falſhood that Sir John's *Name was written in* Michel's *Police-Book with his own Hand, and the Uſe made of it,*

THE firſt Article of the Purſuers direct and poſitive Charge is, that Sir *John Stewart*, Lady *Jane*, and Mrs. *Hewit*, lived at the *Hotel de Chaalons* from the 4th to the 14th of *July*; and as this is their *Coup d'Eſſai* upon poſitive Evidence, it may be proper to give the Hiſtory of it, and trace, Step by Step, how that great Engine for the Manufacture of Witneſſes, the *Tournelle*, was uſed to produce the Sort of Depoſitions they affected to call Proof, for the firſt Time, in the Year 1767.

It appears from the Caſe they laid before their Counſel in *November* 1762, that they went to *Michel*'s ſo early as the 12th of *October* that Year; and the Diſcovery there repreſented is, that Sir *John* and his Family had come there, all of them in extraordinary good Health, *to a retired Quarter*, on the 8th of *July*, to lodge under a *feigned* Name; and that the Name was counterfeited, not miſtaken, was proved from this, that the People of the Houſe remembered his writing it himſelf, and Mr. *Stuart* conſidered it attentively, and knew the Hand of Sir *John*, having often ſeen his Writing. Soon after, on the 5th of *November*, 1762, they applied to the *Lieutenant de Police*, to have the Book put where it could not be altered; in Conſequence of which, a *Procès verbal* was made up before one *Duruiſſeau*, and the Book was lodged in the Cuſtody of one *Buhot*, an Agent for the Purſuers, on the 8th of the ſame *November*. App. to Def. Mem. p. 28. D. P. 1061. A.

In the Caſe laid before the Counſel (which without Doubt contains the ſame Account that was ſent into *Scotland* by Mr. *Andrew Stuart*'s Letter of the 20th of *November*) beſides a Falſhood, to be taken Notice of hereafter, in the Account imputed to the *Michels* of her *très bonne Santé*; and the falſe Account of the Houſe, as in a *Quartier retiré*, there is one remarkable Falſhood which, in Order of Time, ſhould be mentioned now, viz. that it was a *feigned Name, written by Sir* John Stewart *himſelf*, which the People of the Houſe, as well as Mr. *Andrew Stuart*, obſerved.

The Entry was made in a clear, ſtrong, good *French* Hand, by the Maid of the Houſe, who had been uſed to write for a Country *Procureur*. On the ſame Page there are two more Entries of the ſame Hand-Writing; and on the oppoſite Page, then neceſſarily open before them, there were two more. The Book was in their own Cuſtody at the Time of writing the Caſe for the Counſel; and beſides their carefully turning it over at firſt, they had had much Opportunity afterwards to ſee the ſame Hand-Writing in every other Page of the Book. It was, therefore, abſolutely impoſſible for the *Michels* to call it the Hand-Writing of Sir *John Stewart*, and no leſs impoſſible for Mr. *Andrew Stuart* to believe it, when he affirmed it in the Caſe, and in the Account tranſmitted to *Scotland*. Exact Copies on Copper-Plates (or *Fac ſimiles*) of two Pages of this Book, and of two Letters of Sir *John Stewart*'s Hand-Writing, are ſubjoined to this Caſe.

From the Manner of ſtating the Caſe, the Writer ſeems to inſinuate that the *Michels* did not ſee the Entry, but it was read to them out of their Book, and Queſtions put, whether they remembered the Perſons; and on their deſcribing them, whether they remembered the Names. The *Michels* are reported to ſay, they did not well remember the Name, "But you'll find them in the Book; "for we think the Gentleman wrote it himſelf." Upon which the Tutor of Duke *Hamilton* conſidered the Writing, "and remained perſuaded that it was Sir *John Stewart*'s." If this be ſo, the real Suggeſter of that Falſhood was the Tutor of Duke *Hamilton*; for, if the People of the Houſe really thought it poſſible the Gentleman might have writ it himſelf, before they ſaw the Book, it is impoſſible they could think ſo afterwards. But it is highly improbable they ſhould aim any ſuch Gueſs at it, without firſt looking at the Book, after which they could not think ſo: Therefore the Falſhood is referable, originally and ſingly, to the Tutor of Duke *Hamilton*. App. to Def. Mem. p. 28.

But Mr. *Stuart*'s Induſtry did not ſtop with inventing this Falſhood; it was neceſſary to fix it out of the Reach of Contradiction. In the *Procès verbal*, mentioned before, the real Word *Fluratl* was altered to *Fluralt*, to bring it nearer to a *Scottiſh* Name; and the old Man *Michel* was repreſented as declaring, that the Hand was neither his nor his Wife's; but ſo far as he can remember, that of the Perſon called *Fluralt*. D. P. 1062. A.

This Falſhood, among many others, which ſhall be mentioned in their Places, made a conſiderable Figure among the Badges of Fraud contained in that Caſe, which was plainly calculated to miſlead the Counſel; and yet it is much doubted, from the Circumſtance of the Date, and the Opinion

given upon it being ſuppreſſed, whether Mr. *Andrew Stuart* had taken any Opinion at the Time he wrote the Letter of the 20th of *November* to *Scotland*, bearing that he had the Opinion of *One* of the moſt eminent Counſel in *France*, that a Proceſs ſhould be begun in the *Tournelle*; and alſo, whether the Opinion taken in *November*, whatever Part of the Month it was in, was at all favourable to the Commencement of any Suit: and this is the more ſuſpected, becauſe it does not appear to be the ſame Counſel who afterwards ſigned the Opinion in *December:* They were five in Number; whereas only One is ſaid to have ſigned the former, and he is not named.

App. to Def. Mem. p. 36. The firſt Caſe is induſtriouſly put between *Regnicoles François*, and aſks, What might be done in ſuch an Inſtance to eſtabliſh the previous Depoſitions as Evidence, or at leaſt not to mar the Credit of the Witneſſes; and after ſtating that no Proceſs was begun in *Scotland*, and that it would be long before it went to Commiſſion, drops another Queſtion, Whether ſome proviſional Examination might not be made by Order of the Magiſtrates where the Witneſſes live? and, as if to draw an Opinion in favour of ſome Way of prejudicating the Witneſſes, miſrepreſents the Law of both *Scotland* and *England*. Upon this, no Opinion is publiſhed, though it is ſaid in the ſecond Page of the Purſuers Caſe in the Houſe of Lords 1764, to be that of *One* of the ableſt Counſel in *France*; from which it may be fairly inferred, that this is not the Opinion Mr. *Andrew Stuart* relied upon for the Juſtification of what he wrote to *Scotland*, and of the *French* Proceeding which followed.

—p. 41. The ſecond Caſe of *December* the 10th, puts only this general Queſtion; "What Part the Tutors of Duke *Hamilton* ought to take upon a general State of the Facts which he pretended to "have diſcovered?" The Counſel ſet themſelves to conſider, whether it be poſſible for the Tutors, &c. to maintain that Mr. *Douglas* is not the Son of Lady *Jane*, and then how they may proceed to obtain judicial and authentic Proof of it. The Expediency of doing that is reſerved entirely to the Diſcretion of the Parties; and ſo to be ſure it ought, for it was a Queſtion of no Conſequence but to the *Scottiſh* Cauſe, which it would have been abſurd enough to have aſked a *French* Opinion upon.

However, the Advantages they propoſed to draw immediately from ſuch a Proceeding, were ſtronger Inducements than the Opinions of Counſel could countervail for running the Riſque of that Proceeding turning out favourably, without the fraudulent Uſe of which they had no Proſpect even of raiſing a Queſtion.

Accordingly, on the 17th of *December*, above a Fortnight after their Suit was inſtituted in *Scotland*, they preferred their *Plainte* to the *Tournelle*, ſtating the Diſcovery, in this remark-
D. P. 1022. c. able Way, ſo far as relates to the Entry in the Book, "*that there is Reaſon to believe*" it was written by Sir *John Stewart*, without further inſiſting upon it, or ſtating that it was believed by the *Michel's* to be ſo, or even that it was not of their own Hand-Writing, for fear the Witneſſes
P. P. 848. f. ſhould think that Article relative to their Teſtimony important, and that they were called upon to depoſe to it. Accordingly, it appears by Madame *Michel*'s Depoſition, that her Book was not ſhewn her at her Examination: However, to ſupply that Defect, they prayed, that *Michel*'s Book might be brought by Mr. *Buhot* (their Agent, in whoſe Hands it was) to the *Greffe Criminel* of that Court, and tack'd to the Proceedure on the *Plainte*, which was done accordingly on the 18th; and they carried into Court the *Procès verbal*, in which their favourite Falſhood was fraudulently inſerted, without the Privity of *Michel* the Witneſs.

To appropriate a Piece of Evidence, whereby they propoſed to faſten ſuch ſhameful Imputation upon a Woman of the firſt Family and Rank, and to deprive an Infant of his civil Exiſtence; to take that into their own abſolute Power, either to uſe or ſuppreſs as they ſhould ſee Occaſion, was a Proceeding ſo repugnant to the moſt obvious Principles of common Honeſty and Humanity, that no Pretence of Ignorance is ſufficient to palliate the juſt Reproach which belongs to it. The Uſe, however, to which it was applied, in fact, ſhews, that from the Beginning they meant neither to ſuppreſs it totally, nor uſe it fairly, but to corrupt it by Miſrepreſentation.

The ſame Falſehood was reported in this circumſtantial Manner to the *Lieutenant de Police*, to engage, if poſſible, his further Zeal in the Purſuit.

CHAP. II.

Of the firſt Attempt to impute to Sir John *and his Family a Double Abode at* Michel's *and* Godefroi's.

IT was clearly the Opinion of the *French* Lawyers, that the *Day* on which the Parents placed the Birth was but a *Circumſtance*; and that falſifying them in that *Circumſtance*, though it would raiſe great *Suſpicion*, was not the Kind of *Proof* which could deprive the *Son* of his *State*. For that Purpoſe, it ſeemed neceſſary to have direct Evidence to prove, *that his Mo-*

ther

ther was not delivered; therefore, in the firſt Memorial, they ſtate the Day the Parents came to *Paris*, and the Day they returned to *Rheims*, which they ſay could not be above ſix or eight Weeks: All of thoſe they proceed to account for, except the firſt four Days, viz. from the fourth to the eighth, which they repreſent as the firſt Time of tracing them, and confine the Poſſibility of Delivery to them. They argue on the Impoſſibility of her being delivered in that Period, and being able to appear at *Michel*'s in the Way ſhe is ſuppoſed to have appeared; they alſo repreſent it as a very deſirable Thing, to find where they lodged for the firſt four Days; "Juſqu' ici on ignore ces Choſes, quoique l'on ait fait toutes les Recherches poſſibles pour les découvrir." This was ſaid in *November*, on what Day it does not appear; but for the Reaſons given before, it ſeems to be the latter End of the Month.

They had learnt from *Michel*'s People, as early as the 12th of *October*, that the *Hotel de Chaalons* was a Houſe wherein Sir *John* ſaid he had lodged, and had complained of the Noiſe of it during the four Days he had reſided there; they muſt therefore, (nor do they deny it) have gone immediately to *Godefroi*'s; but *Godefroi* had then totally forgot them. App. to Def. Mem. p. 30.

They had learnt alſo, that *Godefroi*'s was the Houſe to which *Rheims* People uſually reſorted; but if they had ever honeſtly ſuſpected a Fraud, finding *them* alſo there was a Circumſtance ſufficient to deſtroy that Suſpicion.

And yet on the 10th of *December*, in the Caſe laid before Counſel, they mention it as a *Probability* that they were at *Godefroi*'s, ariſing from this, that Travellers in that Stage uſually alight there. The Counſel alſo mention their Abode for thoſe four Days with Anxiety; and obſerve, that it does not yet appear what they did at this Time; but they obſerve, that, perhaps, it will be diſcovered where they were from the 4th of *July* to the 8th, and what paſſed in that Period. p. 39. p. 49.

The *Plainte* on the 17th of *December*, ſpeaks of the *ſame Probability* and the Reaſon of it in the very Terms of the Caſe.

On the 18th, *Godefroi* received a Citation, among other Witneſſes, apparently to be examined as to the Probability of their having been at his Houſe; but as he knew no more, and remembered nothing of their Perſons, they paſſed from examining him. Ext de la Procedure Extr.

Madame *Michel* had told them, that the Parents were abſent one or two Days after they came into her Houſe; and it was their Object to trace them Step by Step, and Day by Day.

They were anxious not only to account for that Abſence of one or two Days, but to give it the Air of Intrigue; and this Imputation of a double Abode ſeemed to anſwer both Purpoſes.

They very ſoon after this found a Record of Police, which ran thus: "12 *July*, à l'*Hotel de* "*Chaalons*, Monſieur *Stewart*, Gentilhomme *Ecoſſois*, avec ſa Femme." Which (if they were not wilfully falſe in their ſolemn Averments to the Court of Seſſion, ſo often repeated, and with ſtrong Complaints againſt the Defender's Agents for aſſerting the contrary) they ſeriouſly believed was a Proof of their being at *Godefroi*'s on the 12th of *July*. It is to be remembered, that *Godefroi* had not his *Livre d'Inſpecteur* then by him. Ibid.

The Contents of Sir *John*'s judicial Declaration, though ſealed up to lie *in retentis*, was, contrary to the Faith and Senſe of that Proceeding, ſent over to *Paris*; and he had diſcloſed there, that he remained at the *Hotel de Chaalons*, a Night or two.

With theſe Views and theſe Aſſiſtances they prevailed on *Godefroi* to remember that Sir *John Stewart* had been there; and, becauſe he had denied all Memory of it before for three Months, it was neceſſary to give him a Cauſe of Knowledge. The beſt which occurred was the *Regiſtre de Depenſe*, where only one Account could be found which had any Appearance of Relation to Sir *John* and his Family, and that fell ſhort of their Purpoſe by ending at the 7th *July*: However, he was further perſuaded to tack to it another Account which happened to follow, and lay them both upon Sir *John Stewart*.

At what Time Mad. *Godefroi* was prevailed upon to follow her Huſband's Memory, does not appear; but when ſhe was examined on the 24th of *January*, in the *Tournelle*, ſhe diſclaimed all Memory of ſuch a Family. The Words are; "a depoſé comme l'Addition de *Plainte* ſur le "Fait negatif de tous Accouchemens ſeulement dans ſa Maiſon, car elle ne s' eſt pas rappellé la "Perſonne." She ſays in her ſubſequent Depoſition, ſhe was ſick when examined in the *Tournelle*. It were to be wiſhed that ſhe had always preſerved that Delicacy of Conſcience which a little Sickneſs is apt to inſpire. Sudden Forgetfulneſs or Inattention it could not be; ſhe had heard enough upon that Subject to attend to and remember it, if in Truth, before that Time, ſhe had ever recollected their being at her Houſe. Ibid.

This Syſtem began with the Year 1763, and their *Plainte* of the 4th of *January* was the firſt Act wherein it was adopted; but their Opinion of the Grounds of it, ſo far as it conſiſted in the Evidence of the *Livre de Depenſe*, and the Memory of the *Godefrois*, may be collected from their inſtantly

inſtantly locking this Book alſo up in the *Tournelle*, on the 24th of *March*, to prevent the Examination of it, either by the Witneſs himſelf, who might have diſcovered that the Imagination built upon it was impoſſible, or by others, who had an Intereſt and a Right to inſpect it. That ſuch was the fraudulent Purpoſe of locking it up, will appear not only from the general Proof, which reſults from the groſs Injuſtice of the Proceeding, but from Mr. *Stuart*'s Refuſal to produce it, or any Copy of it, when he was called upon by Mr. *Mackonochie*, the Defender's Agent, and when it was his Duty to ſhew it.

It appears further alſo, from a Paper called *Extract de la Procedure extraordinaire*, which was never publiſhed, further than ſhewing it about in Manuſcript, that they relied upon the Record of the Police for their being there on the 12th.

Their ſecond *Plainte*, of the 4th of *January* 1763, ſtates the Caſe exactly in the ſame Manner, and repreſents, that after they had paid their Expence at *Godefroi*'s, on the 8th of *July*, and had entered upon their Lodging at *Michel*'s, they returned, almoſt immediately, to *Godefroi*'s, where they were upon the *tenth*, known under the Name of *Stewart*, which muſt be the Time of their Abſence from *Michel*'s, under the Pretence of going for a Child which they pretended to have at Nurſe. In all this Time the Book of Expence is not referred or alluded to, nor is the Narrative made up in Conformity to it.

So the fourth *Plainte*, of the 20th of *May* 1763, ſtates that Lady *Jane* left *Michel*'s under Pretence of fetching a Child from Nurſe, and during that Abſence ſhe had returned to *Godefroi*'s, and was found there by the Officers of Police. This plainly refers to the Date of 12 *July*, found againſt their Name in the Record of Police, and carefully abſtains from Reference to the Book of Accounts, or any Evidence reſulting from it.

So the fifth *Plainte*, of 23d of *June* 1763, ſtates the double Abode as before; and for a Proof of their Reſidence at *Godefroi*'s, inſiſts that their Names are found inſcribed in the Regiſter of Police, the 12th of *July*, as found at *Godefroi*'s.

The Condeſcendance of Facts given in to the Court of Seſſion, 25th of *June* 1763, was calculated only to diſappoint the Ends of Juſtice in requiring it, by ſtating the Charge ſo as to make it impoſſible to know what they meant to prove.

Whether *Godefroi* was prevailed on to adopt this Syſtem ſo early as the 24th of *March*, when his Book was locked up, or at what ſubſequent Period, is not worth enquiring, ſeeing his Account of the Articles, in his Book of Expences, was not uſed ſo long as any other Shadow of Proof could be got *per fas aut nefas*.

But it may be preſumed, that they had not gained both him and his Wife over to this Perſuaſion, if either, before the 5th of *July*, the Date of the *Monitoire*, which is the firſt Writing of theirs in which the Date of the 14th is inſiſted on.—In their Pleading upon the Relevancy of the Facts contained in their Condeſcendance, dated the 15th of the ſame *July*, they alſo ſtate the double Abode in the ſame Way as they had done in the *Monitoire*.

At what particular Time this Syſtem was changed is difficult to aſcertain.—*Godefroi*'s *Livre du Commiſſaire* has never been produced. It is pretended that his *Livre des Logeurs* was diſcovered about the Beginning of the Year 1764. This might be ſuppoſed to have ſhewn them, that the Date in the Record of Police was not the ſame as in the *Livre des Logeurs*, unleſs it was then their Purpoſe, as probably it might, to ſuppreſs that Book altogether; for, in their Pleadings in *Scotland*, in the Courſe of the Year 1764, they ſtill affected to inſiſt on the ſame wrong Idea. At the End
D. P. 627. B. of that Year the Defender produced in Evidence an authentic Account of the Manner of keeping the Records of Police in the Year 1748, whereby it appeared that the Returns of the *Inſpecteurs* had only one Date, which was that of the Return itſelf, and not of the Entries contained in it; conſequently, the Date found in the Record indicated nothing of the Time of the arriving, abiding, and going of the Gueſt. After this, their Reſidence at *Godefroi*'s from the 8th to the 12th of *July*, was no more heard of till it was revived upon an Event (to be mentioned preſently), which ſhews abundantly that their Reliance had always been on the Record of Police, and not on *Godefroi*'s Books or Memory.

CHAP. III.

Of their Attempt to prove the Entry at Michel's *on the 8th, by Suppreſſion of* Michel's *Book, which failed on ſome Perjury being diſcovered.*

THE Purſuers knew it was abſolutely in their own Power either to produce the Books or *Fac ſimiles* of them, or to keep them cloſe locked up for ever where they were. They knew alſo that *Godefroi*'s Oath and his Wife's muſt ſtill turn upon only a blank Article in his Books, and be in the Upſhot that very idle ineffectual Thing it now appears; with this againſt it, that they appeared

peared from the Papers of the Purſuers themſelves, to have had no Memory whatever of Sir *John* and his Family for the three firſt Months, that is to ſay, for all the Time the Books were in their own Hands, and probably long after. They, who had kept *Michel*'s Book ſix Weeks in their own Hands, and had conſtant Acceſs to ſee and conſider it, knew at the ſame Time that, if produced, it would ſhew, 1. That all they had averred ſo ſolemnly, and ſo frequently, in *Scotland*, about the Regularity of viſiting by the Officers, was a direct and wilful Falſhood. Inſtead of daily Inſpection, which the Ordonnances enjoin, and which they had averred was regularly practiſed, there are but two *Viſa* in *Michel*'s Book, between *April* and *September*; one on the 17th of *May*, and the other on the 12th of *June*. 2. That the Hand was nothing like Sir *John Stewart*'s. 3. That it was the Writing of the Maid, who appeared to have entered many other Articles in the ſame Book. 4. That the Entry in Queſtion was poſterior to another of the 10th or 12th of *July*, and therefore could not have been made at the Time. 5. That the next Article was ſo late as the 31ſt of *July*, ſo as to exclude all Conjecture when it was entered.

Upon the Face of the Book, therefore, it manifeſtly proved as little as *Godefroi*'s *Livre de Depenſe*; whereupon the Purſuers were driven by the Spirit, or rather the Dæmon, of the Cauſe, to take the deſperate Reſolution of ſuppreſſing the Book itſelf, and ſupplying it by a meditated Perjury. For this Purpoſe one *Duruiſſeau* was prevailed upon to take the following Oath, under Confidence that the Purſuers, who had that in their own abſolute Power, would never ſuffer their Friend to be confronted with the Book itſelf. They have not uſed him well, but Neceſſity is their Excuſe. The Perjury of Duruiſſeau.

1. He ſwore, That he had, by *Procès verbal*, ſtated the Condition of the Book which was then produced and ſigned by him, as relative to his Oath. P. P. 887. c.

2. That the Article concerning the Sieur *Fluratl*, *Scotchman*, and his Family, entered the 8th of *July*, 1748, the Date in Cyphers, "*appeared in no Degree ſuſpicious, the rather as it had Viſa of this Regiſter before and after the Article in Queſtion by the Inſpector.*" Did this Gentleman mean the 12th of *June*, by *before*, and *September*, by *after?* or did he intend a more direct Falſhood? The Sequel of his Oath will ſhew this. —— 887. D.

3. That ſo far as he can remember, the Article preceding that of Mr. *Fluratl*, is of a Date anterior to it.

4. He remembers to have aſked *Michel* whoſe Hand-Writing it was; and that *Michel* told him, it was neither his nor his Wife's, but he preſumed it to be that of the Perſon who called himſelf *Fluratl*. —— 887. H.

5. That the Book of furniſhed Lodgings, which *Michel* brings to him every Month, as Commiſſary of the Quarter, is poſterior to the Year 1750; and that he has never ſeen the Book which *Michel* had for the Uſe of the Commiſſary for the Year 1748. P. P. 888. B.

6. That the Article *Fluratl* appeared of an Hand-Writing diſtinct and different from all the other Articles on that and the oppoſite Page; as far as he can remember, the Letters were well formed, and the beſt written of any on either Page. —— 889. A.

The Object of this Witneſs was to prove the Hand-Writing peculiar to the Article itſelf, and quite different from any other, in order to make Way for another Falſehood, that *Michel* had thought it the Hand-Writing of Sir *John Stewart*; and to prove that it ſtood in ſuch an Order as to appear an Entry of the Date it bore: And the ſame Idea was further confirmed by his Report of the *Viſa*.

The *Livre du Commiſſaire* ought regularly to be kept at the Houſe of the Landlord, and carried once a Month to the Commiſſary of the Quarter, to be viewed and tranſcribed; but the Cuſtom is to leave it at the Commiſſary's, and take it Home once a Month to make the Entries; and ſometimes to leave it altogether at the Commiſſary's, and make the Entries there.

Michel's *Livre du Commiſſaire* had been for a long Time left with *Duruiſſeau*. The Defender's Agent, who ſuſpected him, inſtead of applying to him for a Sight of that Book, had prevailed on *Michel* to fetch it Home and ſhew it him. He obſerved that the Entry in Queſtion was not in the *Livre du Commiſſaire*, where it ought to have been, and where it would have been moſt probably, if it had been entered on the Day of its Date; therefore, before he ſent it back, for Fear it ſhould be deſtroyed, he had as much of it as was neceſſary copied over and examined. The worthy Commiſſary thought the Defender had never ſeen this Book; otherwiſe he never would have ſworn that it began after the Year 1750, and that he had never ſeen the Book of 1748.

They were under the diſagreeable Neceſſity of examining the *Michels* afterwards, not to confirm the Book, the laſt reſpectable Witneſs had done that, but to fill up the Story with what happened afterwards. Mad. *Michel* produced the *Livre du Commiſſaire*, which appeared to begin long before 1748, and oppoſed one flat Contradiction to a Gentleman who ſwore concerning a Book he had Occaſion to view and ſign every Month. She alſo ſwore that the Article concerning —— 848. D.

concerning *Fluratl* was written by her Maid, *Marie Maliſſet*, who wrote many others in the ſame Book, which did more than contradict the worthy Gentleman's Depoſition; it proved that he falſified *Michel*'s Evidence in the *Procès verbal*. It alſo proved that Mr. *Andrew Stuart* was the ſingle Author of that Falſehood with which he deceived his own Employers, his own Counſel, the *Lieutenant de Police*, and the Parliament of *Paris*; for unleſs ſhe had remembered that Circumſtance before the Book was taken from her, it is impoſſible ſhe ſhould have recollected it afterwards.

P. P. 861. D. The next Witneſs was *Michel* the Huſband, upon whoſe Depoſition the *Procès verbal* was made up; who ſwore that he had told *Duruiſſeau*, on that Occaſion, that the Article concerning *Fluratl* was written by the Maid *Marie*. This faſtens the original Falſehood on Mr. *Andrew Stuart*, and eſtabliſhes that the Evidence was miſrepreſented in the *Procès verbal*.

Godefroi, who is now ſuppoſed to have an extraordinary Memory, and to have talked his preſent Language uniformly from the Beginning, was examined about it before in the *Tournelle*, and frequently converſed on the ſame Subject, only ſays, that Mr. *Stewart* and two foreign Ladies came to his Houſe in the Summer 1748; they went away in the Month of *July*, but where he does not know; *he only remembers* that they had hired a Lodging which was not ready, becauſe they wanted to clear it of Bugs: And what recals this to his Memory is, that Mr. *Stewart* paid his Reckoning and thought to go; but the Lodging not being ready for him, he ſtaid ſome Days longer, as appears by his Book of Expence.

--- 828. B.
--- 830. F.

Was this all the Story he had been telling, according to the Purſuers, to every Body who enquired, for two Years together? or all he then remembered, with the Aſſiſtance of the *Monitoire* to refreſh his Mind? or did he ſuppreſs the reſt for Fear of interfering with the Purſuers Plan? It ſhould be remarked, that even this was ſaid in Anſwer to the Defender's Interrogatory; the Purſuers put no ſuch Queſtion to him; they did not even then rely on ſuch frivolous Evidence as they have been driven to ſince.

--- 832. C. Mad. *Godefroi* only ſays, that they lodged there in the Summer 1748.

CHAP. IV.

Of their Attempt to prove, after this, that Sir John *and his Family remained at* Godefroi's *from the 4th to the 14th.*

THE *Michels* Evidence was given the 15th of *April*. Thoſe who acted for the Purſuers in *France* ſeem not to have known for ſome Time that their Fraud was laid perfectly open: It required Time to conſider whether this diſgraced Plan of Evidence would hold Water in the Court of Seſſion.

However, by the 20th of *May* the Neceſſity of ſhifting the Ground was ſeen, and a Witneſs,
--- 734 A. M. *Mortier*, examined to pave the Way for changing the Date of the *Enlevement* of *Mignon*'s Child.

--- 606. I. The Defender's Agent had often applied to Mr. *Andrew Stuart* for a Copy of *Godefroi*'s Books, or at leaſt of the Articles, in the Months of *May*, *June*, *July*, and *Auguſt* 1748; but on the 23d of *May* 1765, obſerving that they meant to abandon the Reſidence at *Michel*'s, and reſort to the diſcarded Idea of a Reſidence at *Godefroi*'s, he applied more preſſingly ſtill for ſuch Copies; repreſenting, that it was in their *Power*, by the Rules of the *Tournelle*, to obtain Copies of the Pieces depoſited by themſelves. This Requeſt was made by Letter, to which Mr. *Andrew Stuart* was pleaſed to return no Anſwer.

In the Middle of *July*, when the Commiſſion was near expiring, Mr. *Andrew Stuart* was pleaſed to produce thoſe Books, in order to the Examination of *Godefroi*; taking Care that the Defender ſhould not have Time enough to get Copies, much leſs to make the proper Enquiries after the Perſons contained in the Book; and (which was ſtill a wider Field, but withal more neceſſary) after thoſe who were not named in it, but were in the Houſe; a much larger Number than thoſe who were, and more difficult to trace.

Mr. *Andrew Stuart* ſhewed that he had it in his Power to procure the Inſpection which the Court of Seſſion ordered in 1763, whenever he pleaſed; but in Contempt of their Order, he withheld it, till it was too late for the Defender to ſet on Foot any Enquiries about it.

Mr. *Andrew Stuart*'s Apology, as it ſtands in his Anſwer to the Proteſt, was, 1. That he had
--- 608. given the Defender Copies of all the Extracts he had taken from the Book; therefore the Defender, being put in as good a Caſe as the Purſuers, had no Reaſon to complain. Whether this be true or not, every Perſon muſt ſee it is nothing to the Purpoſe; the Defender might, and certainly did, want more and larger Extracts than the Purſuers. 2. That the Laws of *France*, though it might give the Purſuers, as Proſecutors, a Right to take Copies, yet did not allow them to be communicated to the Defender; as if Mr. *Douglas* was the Defender to the *Tournelle* Action. In Truth, his Father, the real Defender, was dead; and if their Suit went to Heirs,

Heirs, he had an elder Brother. It would be unjuſt to call that an Evaſion, ſeeing it is manifeſtly meant for an Inſult, and a very ſtrange and bold Inſult it ſeemed to be upon the Court as well as the Parties.

But in this Stroke of Inſult, Mr. *Stuart* ſeems to have been extraordinarily direct in ſhewing Diſobedience and Contempt to the Interlocutor of the 27th of *July* 1763, as amended in the Houſe of Lords. The Interlocutor finds, that the Purſuers muſt *preſent a Petition to the Parliament of Paris*, praying that the Depoſitions in their Suit there may be cancelled; and that Inſpection, with Liberty to copy, may be allowed of the whole Procedure; and if the Depoſitions cannot be cancelled, the Interlocutor finds, that the Purſuers *muſt procure Inſpection, with Liberty to take Copies of the Plaintes, Proofs, Books, Writings, and whole Procedure, fifteen Days before examining any Tournelle Witneſs*. To this Order the Houſe of Lords added, "But in Caſe the Purſuers ſhall *inſiſt* that "they cannot procure the Depoſitions or *Writings abovementioned, to be* delivered up or *inſpected*, "then they ſhall produce all Copies thereof, &c. (here follows a great Variety of Articles) which "are in their Cuſtody or *Power*."

Though the Order was relaxed, in Caſe of the Purſuers *inſiſting* that it could not be complied with, the Purſuers were not thereby authoriſed to *inſiſt* on an avowed Falſehood, and *evade* it ſo; and yet Mr. *Andrew Stuart* has ſhewn, by keeping this Book up from the Defender, and producing it when he wanted it himſelf, that he had it all along in his *Power*, and that his *inſiſting* was a *Falſehood*, aſſerted only to *evade* the Order of the Court, and abuſe the Indulgence of the Houſe of Lords.

Again, the alternative Injunction of the Houſe of Lords was to produce all Copies of the Books, Writings, &c. in the *Procedure extraordinaire*, in their Cuſtody, or *Power*. A Copy thereof, which they were able to *procure*, was in every Senſe in their *Power*, and moſt particularly ſo in that Senſe wherein, for the Furtherance of Juſtice, indeed of common Honeſty, theſe Words of the amended Interlocutor ought to be taken. Now Mr. *Andrew Stuart* having owned, in his Anſwer to the Proteſt, that it was in his *Power* to have *Copies* of the Book in Queſtion, and having refuſed and evaded to communicate them by ſuch a barefaced Equivocation as the calling Mr. *Douglas Defender*, has ſurely been guilty of Diſobedience and Contempt.

Thus, in Violation of common Juſtice, and in pointed Defiance to the amended Interlocutor, Mr. *Andrew Stuart* precipitated into the Cauſe a Piece of Evidence, which the Purſuers rely upon as the moſt material Article in their Caſe; and at the ſame Time openly witheld it from the Defender, on the expreſs Purpoſe of hindering him from enquiring into the Condition and Purport of the Book, and looking after thoſe who *were* entered there, and thoſe who *ſhould have been there*, to ſubſtantiate the Uſe made of it, in Argument, by the Purſuers.

Under theſe Circumſtances *Godefroi* and his Wife were a ſecond Time examined, and this is the Effect of their Evidence, in both Depoſitions:

They kept a large Inn, in which there were fifteen principal Rooms for Gueſts, beſides thoſe for Servants, four of the former being double-bedded. It was a Houſe of very full Reſort then, as now, ſays Madame *Godefroi*, very much frequented, inſomuch that in order to be ſure of a Lodging in her Houſe, it was *often* neceſſary to write before-hand to beſpeak it; but this does not hinder that People *ſometimes find* Lodging without having pre-engaged it. But her Rooms are commonly all full, from the Beginning to the End of the Year; and ſhe ſometimes cannot receive all thoſe who come. In the Year 1748, there came ſometimes *Engliſh*, and other Foreigners. M. *Godefroi* ſays alſo, that in general his Houſe has always been very much frequented, and is ſo ſtill. The *Engliſh* come but ſeldom, and ſtay little While, *except People of Trade*, it being in the Quarter of Commerce. Ladies, alſo, come but *ſeldom*, his Houſe having always been frequented *more* by Men than Women. P. P. 833. c. —— 829. c.

At the very Time in Queſtion, it is agreed, on all Hands, that the Houſe was thronged. Sir *John Stewart* told Mad. *Michel*, that his Head was almoſt broke with the Noiſe of that Inn, during the four Days that he ſtaid there; and in his judicial Declaration he ſays he lodged but a Night or two, by Reaſon of its Inconveniency.—M. *Godefroi* ſays, that there were a great many People then in the Houſe; becauſe their Room, as he ſeems to recollect, was only on the ſecond Floor, above what is now the Coach-Houſe.—This laſt ſeems to be rather an Imagination, ſpringing from his general Memory that the Houſe was full; for Madame *Godefroi*, whoſe Care was more immediately employed upon that Part of the Buſineſs, only ſays, after her Huſband, that, ſo far as ſhe "can recollect, they were lodged on a ſecond Floor, in a two-bedded Room, over the *Remiſe*." App. to Def. Mem. p. 30. P. P. 852. c. —— 829. c. —— 831. b.

They kept two Books of Police of the Kind which has been often mentioned; and they kept them in the Manner wherein *Michel*'s Books, and ſuch Books in general, are wont to be kept. Her own Repreſentation of it is to this Effect: "That *her Houſe being known, and unſuſpected*, the Inſpector "does not come every Day, but is *ſometimes* eight Days without coming." Every Houſe in *Paris* has the ſame Mark of being known and unſuſpected; and her *ſometimes* would have been more accurate, if ſhe had applied it to a Fortnight, or to three Weeks, than to eight Days. In ſhort, there —— 827. b. —— 831. b.

there is no Sort of Regularity in this, which is the Basis of the whole System of Police. As to her Way of keeping this Book, it sometimes happens, that it is only at the Instant of the
P. P. 831. F. Inspector's Visit that they write down the Persons who have been there since the preceding Visit; so that it may happen, that a Person is not written down till several Days after his Entry, (this is in Reference to Sir *John*'s being entered the 7th, she should have said, till some *Weeks*) and *sometimes is even forgot altogether* to be written down. It has happened, *once or twice*, when a Per-
P. P. 830. C. son has been *thus* forgot (viz. forgot altogether) not to write him down till a Fortnight after his Entry, and *then to write him down of the current Date.*—Mr. *Godefroi*'s Account of the *Livre de l'Inspecteur* is not so particular: He avers, however, That, *generally*, the Names of the Persons who lodge at this Deponent's Hotel, are put down in the *Livre de l'Inspecteur*; but that sometimes they are forgotten, or are put down of Dates posterior to their Entry, because often the Names are not put down till the *Inspecteur* makes his Visit, and *he does not visit every Day*. And it may sometimes happen, that they do not learn the Names of the Persons till some Days after their Entry.—By this ingenious Account of the *Livre de l'Inspecteur*, it is conveyed that, *generally*, as M. *Godefroi* says, the Names of his Lodgers are contained in that Book; and that the Accident of a Mistake happens but *sometimes*, and *sometimes* they are even forgot. This Account, so Fortune would have it, was given before the Pursuers had determined to favour the Court with a Sight of the Books, and while they were *insisting*, in Terms of the amended Interlocutor, that they could not procure these Writings to be delivered up or inspected.

—— 827. I. Mr. *Godefroi* proceeds to represent that he kept what he affects to call a *Register*, or Book of Expence, in which was written the Expence made by those who lodged in his House; which Book served as the Rule for making out the Accounts of what they owed the Deponent for
—— 831. H. Entertainment, Lodging, and other Expences. Madame *Godefroi* says, that besides the said Books of Police, she kept a *particular* Book of the daily Expences relative to the Persons who lodged in her House; and that the Dates of that Book are exact, because the Deponent's Interest required it. The Names of those who come to lodge are usually set down at the Article of Expence relative to them; but that it sometimes happens she only puts *Monsieur* or *Madame*, without the Name; so that there is no Person who comes to lodge in the House, *and have made Expence there*, whose Articles are not borne in her Book of Expence: But that a Person who uses to come to lodge, and may have slept there one Night, without other Expence, may happen not to be inserted. They add, that *this Book* of Expence is lodged in the *Tournelle*.—This Part of their Deposition more than insinuates; it conveys directly, that a single Book of Expence, then lodged in the *Tournelle*, contains an Account of all their Lodgers, except such as use to resort there, and, staying only a single Night, make no Expence. This also was sworn, while Mr. *Andrew Stuart* was advised, that the best Use he could turn the *Tournelle* to, was to secrete all the Books, and rather trust to the Oath of *Duruissau* than of the *Godefrois*.

—— 834. C. Mad. *Godefroi* swears, that in 1748 the Guests paid three Livres a Head a Day for Lodging
—— 834. F. and Victuals, whether they ate or not, independent of *Wood*, *extraordinary Wine*, *Breakfasts*, *or other Expences*; and those who came often to the House paid thirty Sols for sleeping there, whether they supped or not. Those who chose to eat in their Apartment, if they were not satisfied with the Ordinary, gave Notice of it; but *generally* they were all satisfied with it; and that the Price of the Ordinary was the same, whether People ate in their own Apartments or at the *Table*
—— 834. H. *d'Hôte*. If any Body chose to eat at a higher Price, he was served at what Price he pleased.
—— 845. B. Mr. *Godefroi* says, that in the ordinary Price of his Hotel, at three Livres a Day, a Bottle of Wine at twelve Sols is included for each Person; and that better Wine is paid for by adding the extra Price. From hence it appears that there were two Customs in the House; one to charge such as liked to live so at the *Table d'Hôte* Price, the other to charge them as ordinarily happens elsewhere, for the Particulars they called for; and also that Breakfasts, extraordinary Wine, and other Expences, were excepted out of the *Table d'Hôte* Price.

—— 829. E. Mr. *Godefroi* was himself engaged in much other Business, which, as he describes it, consisted
—— 833. F. "in managing Affairs abroad." He was (says Mad. *Godefroi*) chiefly occupied with Affairs abroad, such as receiving Rents and executing Commissions: He was Agent for the City of *Rheims*, and many other People. They both agree that Mad. *Godefroi* was charged with managing the Affairs of the Family within Doors; and she kept the *Livre de Depense*, except when she was sick or indisposed, and then her Husband or the Children kept it: And Mr. *Godefroi* says, that she always kept the *Livre de Depense*, except she was absent or indisposed: and, having been examined before
—— 829. E. the Book was produced, he adds, that she was neither absent nor indisposed in *July* 1748, but the Articles were written by her.

This being the State of all the Opportunities they had to observe and remember particular Guests in a crouded House, fifteen Years after they left it, it remains to see what Kind of Notice they pretend to have taken of Sir *John* and Lady *Jane*.

—— 829. A. Mr. *Godefroi* saw the two Ladies very imperfectly, as he never went up into their Apartment, and through the Course of the Day his Affairs called him often abroad. Mad.

Mad. *Godefroi*, who had Charge of the Houſe, depoſes that ſhe does not recollect to have ſpoke to theſe Ladies: That ſhe does not recollect the Figure of the three Perſons, if it be not that ſhe believes very confuſedly that the Gentleman was tall, and dreſſed in red: That it is not ſurpriſing that ſhe does not ſtill preſerve the Remembrance of them after ſo many Years, becauſe when her Gueſts arrive, the Deponent only cauſes them to be conducted to their Apartment by her Servant: That ſhe never goes into their Apartments unleſs they are ſick, and ſhe does not remember to have gone into their Apartments: That when *Engliſh* Gentlemen or Ladies come to the Houſe, it is generally for a very few Days, and till they find a Lodging ſomewhere elſe: This was their Practice then, as it is at preſent; and therefore ſhe obſerved theſe Strangers *leſs* than others: —— 834 E. She does not remember Mr. *Stewart*'s or the Ladies going out often, or even if they went out at all. This, though true of Lady *Jane*, who was not in a Condition to go out, is proved to be quite otherwiſe as to Sir *John Stewart*; for he reſorted to *Pelletier*'s Coffee-Houſe, and got acquainted there with *Pelletier*, *La Marre*, *Con*, and others; which is confirmed by Mad. *Pelletier*, who —— 990. E. ſays, he was dreſſed in a Cheſnut-coloured Coat; and that her Huſband uſed to go to Sir *John*'s —— 991. D. Lodging in the *Rue St. Martin*.—This proves how little Obſervation theſe Witneſſes took, if their Memories had been ſufficient to carry ſuch Circumſtances as their Imagination has depoſed to. P. P. 832. C.

To this Effect they depoſed on the 3d of *May*. It has been ſeen how the Purſuers Idea of that Period was blown up: It became neceſſary to produce *Godefroi*'s Books, and to prove that the Defender's Parents were at the *Hotel de Chaalons* till after the 10th of *July*.

On the 15th of *July*, a Fortnight before the Examination, the Defender's Agents were invited —— 605. C. to go to the *Greffe*, to viſit the Books, and obſerve the State of them. On the 18th the Books were carried to Mr. *D'Anjou*'s, when they were allowed to look at them: And, as the Manner, in which that Favour was conferred, proves the abſolute *Power* of the Purſuers over that Evidence which was to decide on the Defender's Fate, it may be proper to mention that they were obliged to go to the Houſe of *D'Anjou*, the *Procureur* for the Purſuers; and under Pretence of its being a Depoſit with him from the Parliament; *i. e.* for Fear the Opportunity ſhould be too open of commenting upon it. Mr. *D'Anjou* choſe to be in the Room all the While, to prevent the Book which they knew every Syllable of, and moſt likely had copied throughout, from being corrupted, torn, or ſtolen: The Conſequence of which was, that thoſe who attended for the Defender, wrote the Obſervations which occurred to them, and were obliged to compare them when they went Home, it being impoſſible even to whiſper a Thought about them in the Hearing of ſuch Adverſaries. The Copies —— 1016. C. they did not get till the 17th of *Auguſt*, above a Fortnight after the Examination of the two *Godefrois*, when the Commiſſion was finally cloſed. This was the Time and Opportunity allowed them to note the Appearance of all the Entries in the Book, and make the Enquiries concerning it; a Kind of Diſadvantage iniquitouſly put upon the Defender; under which it is believed no civil Right was ever tried before; and ſtill leſs ſo important a Queſtion as this, drawing to ſo many deep Conſequences.

On the 30th of *July* the Books were produced; and the Articles pointed out by the Purſuers as —— 83. D. relative to Sir *John Stewart*, were, 1ſt. An Entry in the *Livre de L'Inſpecteur*, "7th *July* 1748, "Monſ. *Steward* Gentilhomme *Ecoſſois* & Mad. ſon Epouſe." 2. An Entry in the *Livre du Depenſe*, —— 835. G. in the following Words and Figures:

		£.	s.
"Juillet 1748.	Monſ.		
"Du Jeudé 4.	Sont entré à Souper.		
"Deux Bouteilles de Bourgogne		1	10
"5. Trois Bouteilles de Bourgogne		1	16
"6. Trois Bouteilles de Vin		1	16
"7. Deux Bouteilles de Vin		0	12

—— 102. F.

Which is cloſed with a black Line, and the Account appears croſſed out.

3. An Entry in the following Words and Figures, which follows the firſt Account.

"8. Monſieur a payé & recommence le neuf à dî- "ner hors une Bouteille de Bourgogne qui n'a "point été comptes le huit a Soupé	1	4
"9. Deux Bouteilles de Bourgogne	0	12
"10. Trois Bouteilles de Bourgogne	1	16
"11. Trois Bouteilles de Bourgogne	1	16
"12. Deux Bouteilles de Bourgogne	0	12

Carried over

	£.	s.
" 13. Trois Bouteilles de Bourgogne - -	1	16
" Pour du Beurre tous les Jours - -	1	0
" Un Carreau de Vitre - - -	0	5
" Cinq Jours & demi - - -	49	10
" Extraordinaire du Vin - - -	0	6
	58	17

Which is closed as before with a black Line and Crosses through the whole Account in the same Manner as before.

4. An Account in the following Words and Figures:

" Du Jeudi 8 Aouſt, 1748.
" Monſ. Stewart eſt entré à Souper.

" 11. Une Demi Bouteille de Bourgogne & une " Mulſeaux - - -	1	6
" 12. Une Bouteille de Vin blanc - -	0	8
" Quatre Jours & demi - - -	13	10
	15	4

Which is alſo cloſed with a black Line and croſſed out.

P. P. 828. B. —— 828. I. —— 830. A. —— 838. D.

In Support of this Idea Mr. *Godefroi* ſwears, that in the Summer 1748, a Gentleman who was a Foreigner, and told the Deponent that his Name was *Stewart*, came to his Houſe, with two foreign Ladies: That he was at that Time, and ſtill is, Agent for the City of *Rheims*; and that Monſ. and Mad. *Stewart* were directed to him with a Recommendation from ſome one at *Rheims*, he believes M. *Maillefer*: That he believes, but does not remember, that he was dreſſed in Red the firſt Time, but does not at all remember how he was dreſſed the ſecond Time: That it was to his Wife they paid their Expence: He affirms that the two Accounts of the 4th and 9th of *July* belong to Sir *John Stewart*; and alſo that of the 8th of *Auguſt*.

Mad. *Godefroi* only reaſons to the ſame Concluſion upon the Face of the Books, and pretends to no other Memory whatſoever.

CHAP. V.

Obſervations upon the Memory which the Godefrois *are ſuppoſed to have of the Perſons of their Gueſts.*

App. to Def. Mem. p. 34, 35. 50. D. P. 737.

IF it could be forgotten that neither of them remembered a Syllable of all this for the firſt three Months, (as it appears from the beſt Proof which is no where contradicted) and probably for a much longer Time; it would ſtill be eaſy to ſhew that the whole Evidence of the Huſband reſolves into the Argument which the Wife draws from the Books, and conſequently that every Reader is as competent a Witneſs, and as clear a Judge of the Truth, reſulting from this Argument as either of the *Godefrois*.

The proper Method therefore to be obſerved in diſcuſſing their Evidence ſeems to be this, to ſhew that neither of them have Pretence to that Sort of Memory of their Gueſts, which is ſufficient to prove the Dates of their Entry or Departure. That the Books are not of ſuch a Sort, or ſo kept as to eſtabliſh any ſuch Facts. That there is nothing in their Memories which combines with the Books, ſo as to draw any Aſſiſtance from them, or pour any Light upon them, by which the Truth or Certainty of ſuch Facts may appear.

It ſeems ſtrangely improbable, that M. *Godefroi*, whoſe Buſineſs called him away from the Care of the Houſe, which fell habitually to the Charge of his Wife, ſhould remember theſe Gueſts, *and theſe only*, after fifteen Years from the Time of their being there, when neither he nor his Wife, from whom it might better have been expected, remember any Thing of their Figure, and gives the ſtrongeſt Reaſons why it was impoſſible ſhe ſhould, becauſe ſhe attends none of the Gueſts herſelf, and remarks theſe Foreigners leaſt of all, eſpecially when it appears that every Topick, from which this Memory is ſuppoſed to be fetched, muſt have been ſuggeſted to him, and have been adopted with that partial Zeal which creates an Influence, as will be ſeen, upon every Part of his Evidence.

1. The

1. The Purſuers argue upon the general Probability of ſuch Memory; and not ſatisfied with *Godefroi* and his Wife's Anſwer, they attempt to prove it another Way, by putting a Caſe concerning an Inn-keeper at *Edinburgh*; wherein they inſert the whole Matter diſputed, as if it were proved; and then aſk, Whether it be probable he ſhould remember it? Abſtract from theſe Articles, ſuppoſed in their Caſe of the *Edinburgh* Inn-keeper, which do not exiſt in this of *Godefroi*'s, The Anſwer is, that moſt probably the *Scottiſh* Inn-keeper would have forgot the Circumſtance altogether, and it is very certain he would not remember the Day of their coming and going. Purſuers Arguments in ſupport of Godefroi's Memory.

2. They aſk, Whether *Godefroi*'s Memory is not likely to be as good as that of the Landladies at *Aix*, *Rheims*, and *Paris*? It happens unluckily for this Argument, that no one of theſe Landladies undertook to remember when they came, but by Reference to Books in which their Names were found, and the Landlady at *Paris* was actually miſled by her Book to ſpeak of their Entry at a Time when it is now confeſſed they did not come there. But from their having not only continued with them long, but converſed with them much, they remember thoſe Circumſtances which both *Godefroi* and his Wife do not pretend to recollect. As far therefore as this Inſtance goes, it proves he might have remembered their Perſons, if he had not given ſufficient Reaſons againſt that; but that he could by no Means have pitched upon Dates.

3. That they were Foreigners and *Britiſh*, is ſtated as a probable Reaſon for remembering them.—Neither *Godefroi* nor his Wife were apt to ſtare at *Britiſh* or other Foreigners.—He ſays, that few *Britiſh*, *except Merchants*, came there: That as his Houſe is ſituated in the Quarter of Commeree, *theſe* did reſort to it; but he does not ſpecify the Numbers. Mad. *Godefroi* ſpeaks of them as People that uſed to ſtay but little While; for which, and other Reaſons, mentioned before in the Account of her Depoſition, ſhe takes *leſs* Notice of *theſe Foreigners* than ſhe does of other People. P. P. 829. D. —— —— 832. E.

4. That as there were two Ladies in Company, it muſt ſtrike their Notice; becauſe few Ladies come to his Houſe, which has been always much more frequented by Men than Women; —and ſo is every Inn in *France*; and the Proportion of Women lodging at the *Hotel de Chaalons*, if it may be gueſſed at from their *Livre de Depenſe*, is at leaſt as great as their Reſort to any other Houſe: That Book contains the Names of a very ſmall Proportion of their Gueſts of any Sort, and particularly of their Women-Gueſts, who do not uſually eat at the Ordinary; yet there are Entries of no leſs than five Women in the *Auguſt* following, when Sir *John* reſided there the ſecond Time; though *Godefroi* and his Wife ſay they remember no other Woman being in their Houſe in the Year 1748.

5. Sir *John*'s Return is inſiſted on as an Aid of Memory;—People who reſort to an Inn *frequently*, being more likely to be remembered than others.—Coming twice, fifteen Years ago, is not that Sort of *frequent* Reſort, which is likely to impreſs ſuch Remembrances; whatever Memory would ariſe from it, muſt have been of his Perſon, which is forgot, not of the Time of his coming or going: Nor is that Circumſtance pretended to have been remembered but from the Book.

6. That he recollected, though he had not his Letters by him then, that it was *Mailleſer*, the Syndic of *Rheims*, who recommended him. This alſo ſhews the Strength of his Memory; and the Purſuers ſay, both Parties were ſurpriſed at it; and they thought it ſuſpicious, till his Letters were produced to confirm him.

The Purſuers have a Right to affect what Surprize they pleaſe, and to chuſe their own Occaſions; but they have no Right to impute Ideas to others which diſgrace their Underſtandings. How could the Defender's Agents be aſtoniſhed at Mr. *Godefroi*'s Memory of *Mailleſer*'s Recommendation? They knew that he did not remember it, nor mention *Mailleſer*'s Name, or any other Body's, as recommending them, till *May* 1765. They could read alſo, that even then he believed that Sir *John* and Mad. *Stewart* were recommended by Somebody at *Rheims*, and he believed it was *Mailleſer*; and if he had been able to ſay as much from the Beginning, it would have afforded no Room for Surprize. It was well known that they came from *Rheim*, and returned thither; that they were in Intimacy with Mr. and Mad. *Mailleſer* after their Return, and Sir *John* had viſited them before; it was the only Family, except that of *Andrieux*, where he had viſited, and *Mailleſer* correſponded with him as Agent for the Town. Theſe were Grounds ſufficient for all *Godefroi* ſwears on that Head: That he believes *Somebody* at *Rheims* recommended them; and that *Somebody* he believes to be *Mailleſer*. In theſe Beliefs, one under another, there is no Trace of Memory, but only a natural Inference made upon known Circumſtances; and he delivered it in the Language of Inference only. If it had been Memory, inſtead of Imagination, his Memory would have gone into more ſtriking Particulars, as his going to the *Barrier* to take Care of their Luggage, the reſt of *Mailleſer*'s Letters, wherein he correſponds about them, and Sir *John*'s own Letters, which were all conſigned to him from *Rheims*. But the Purſuers were ſurprized at it, and even thought this Part of *Godefroi*'s Account ſuſpicious, becauſe they knew the concealed Manner in which Sir *John* and his Family had lived at *Paris*; and it was unlikely,

likely, in their Opinion, that he ſhould have aſked a Recommendation from any Body. The Surprize was natural; the Suſpicion was juſt. But it happens that this is almoſt the only Part of *Godefroi*'s Imaginations which it does not apply to with irreſiſtible Force.

7. Another Circumſtance which they ſay aids M. *Godefroi*'s Memory is, that Sir *John* told him they had hired another Lodging, which was not ready, becauſe they wanted to have it cleaned from Bugs. But this which the Chaſm in the Accounts is ſuppoſed to have brought to his Recollection, is no Proof of Memory. In Truth, there is ſtill a better Proof that no Praiſe is due to his Memory from that Circumſtance, becauſe it is impoſſible to have happened at all, and ſtill leſs to have been connected with their Book: Whatever their Plan was, they would not have gone into a buggy Lodging, knowing it before; and as they are not ſuppoſed to have left *Godefroi*'s to try it, it was utterly impoſſible to know it. Beſides, the Houſe they went to was not cleaned of Bugs, for they were obliged to leave it on Account of Bugs, and actually brought a Bug along with them to *Michel*'s. *Godefroi* had heard this Story, and applied it impracticably, thereby ſhewing his Diſpoſition, without effecting his Purpoſe. But this will be more particularly obſerved upon hereafter.

8. Another Circumſtance is, that *Godefroi* remembers Sir *John* told him, he came from *Dammartin*. A ſtrange Inſtance of Memory! recollected after it became a well known Fact in the Cauſe that Sir *John* had been at *Dammartin:* And that it was not remembered, but learnt from the Purſuers, appears from this, that if he had recollected it, he had much better Grounds than ſuch a Converſation, for he ſent Sir *John*'s Letters to him there.

CHAP. VI.

Obſervations upon the Evidence which is ſuppoſed to ariſe from Godefroi's *Book.*

FROM hence it appears that the only Queſtion is, Whether the Books, deſcribed as they have deſcribed them, afford of themſelves, and without other Aſſiſtance, a Proof that Sir *John*, Lady *Jane*, and Mrs. *Hewit*, reſided at *Godefroi*'s from the 4th to the 14th of *July:* For if the Books are not of ſuch a Sort, and ſo kept, as to prove all this by themſelves, the *Godefrois* have no Pretence to any Memory which can ſupply them; and after all their Affectation to extol *Godefroi*'s Memory, the Purſuers themſelves ſum it up in nearly the ſame Manner: They hope it cannot ſeem incredible, that the *Godefrois* ſhould remember ſuch People were in their Houſe ſome Days in the Year 1748. This, they argue, is, in Effect, the Whole of what they depoſe to from Memory; they do not pretend to remember on what Day they came in, nor on what Day they departed; but they point out their Account in the Houſhold-Book to fix the Day of their Entry, the Number of Days Reſidence, and the Day of their Departure.

Now, if it were true that the *Godefrois* had remembered this before they were told of it, or had believed it even after they heard it and examined their Houſhold-Books, what would it amount to? No more than to this, that their only Way of fixing the Time of their Reſidence is by the Books; and that unleſs the Books are really of ſuch a Sort, and ſo perfectly kept, as to point out the Lodgers with Preciſion and Certainty, the only Means which the *Godefrois* have of fixing the Time fails. It will be proper, therefore, to examine what is the Nature of their Books, and what the Manner of keeping them, upon which ſuch vaſt Streſs is laid, and which are to draw to ſuch deep Conſequences

Obſervations on Godefroi's Books.

The firſt Book is the *Livre de l'Inſpecteur*, which contains about one Half of the *Livre du Depenſe*; the ſecond is the *Livre du Depenſe*, which relates only to thoſe who lived at the *Table d'Hôte*, or, if there were really any ſuch, in their own Apartments, at the *Table d'Hôte* Price; and contains a very ſmall Proportion of the Gueſts who came there, ſuppoſing the Houſe to be frequented in any Degree correſponding to their Accounts of it..

In order to apply the blank Article in the *Livre du Depenſe* to Lady *Jane*, it is neceſſary to preſume that ſhe lived at the *Table d'Hôte*, or, if that was really the Cuſtom of the Houſe, upon the Fare and at the Price of the *Table d'Hôte*. In order to found that Preſumption, it is alſo neceſſary to be proved, that Nobody could live otherwiſe in that Houſe; for if any Number whatever did live otherwiſe, it will eaſily be preſumed that Lady *Jane* was in ſuch Number; in which Caſe the Book has apparently no Relation to her.

On the other Hand, the *Godefrois* dare not pretend to the Memory of any other Paſſage in that Period. He recollects no other of the Gueſts whoſe Scores were in the Blanks; he had two Servants of the Name of *Feuquier*, who had lived with him five or ſix Years, and one married in the Houſe that very Year; he had formerly had another Servant, of the Name of *Borin*, who was dead ſome Years before that Period, and he named *Borin* as his Servant at that Time, quite forgetting

getting both the *Feuquiers*. The Servants who have been queſtioned upon this Subject are in the ſame Situation; they do not pretend to the leaſt Memory of them, or of any one Circumſtance concerning them. According to *Godefroi*, Sir *John* never went out, and Nobody viſited him; though it is certain he went out every Day to *Pelletier*'s Coffee-Houſe, and *Pelletier* called upon him. D. P. 313. c.

As to the firſt, that People did live there in another Faſhion than that of the *Table d' Hôte*, would have been preſumed from the Nature of the Thing, if Mad. *Godefroi* had not admitted it. The Fare of the *Table d' Hôte* was at the Rate of three *Livres* a Day, out of which is to be deducted twelve *Sous* for Wine, and whatever may be accounted for Lodging, which, when not occupied, they reckoned at Ten *Sols* each Night. This reduces the Price of Dinner and Supper to Nineteen Pence; from which is to be deducted the Price of the Bed occupied (above that unoccupied,) which would leave little more than Sixpence a-piece for each Meal; that every Body ſhould chuſe to live ſo is incredible; that the *Engliſh* eſpecially, do not live ſo is notorious; and though it appears that *Engliſh*, eſpecially Merchants, did reſort to this Houſe, yet no *Engliſh* Perſon is found in thoſe Books for the Years 1747, 1748, and 1749, except Sir *John Stewart*, when he came alone in *Auguſt* 1748, who ate there but twice in the four Days he ſtaid; one *Williams*, a Merchant, who ſtaid but a very few Days; and one Mr. *Swinburn*, who was ſick and had ſome Beef-Tea, but does not appear to have dined there at all. The *Livre de l' Inſpecteur*, which does not contain one tenth Part of the People who uſed the Houſe, yet mentions one Mr. *Wright* as there in the Month before Sir *John* came, but there is no Account whatever opened for him; ſo that he muſt alſo have lived in another Way than that of the *Table d' Hôte*. A *Table d' Hôte* is to be found at almoſt every Inn in *France*; but there is alſo to be found there other Sort of Entertainment, which the Landlords are very ready and deſirous to furniſh, becauſe they get more by it: and Mad. *Godefroi* allows, that People who did not like the Ordinary, uſed to be furniſhed in what Manner they pleaſed; though ſhe thinks, that in general, People liked it: And Lady *Jane* is ſuppoſed, like Madame *Godefroi*'s Cuſtomers in general, to have liked it; to have lived without Breakfaſt, Tea in the Afternoon, or any kind of Accommodation, but a Dinner conſiſting of Sixpenny-worth of Victuals, ſerved from the Ordinary. Yet the Purſuers are at Pains to prove, that except on this extraordinary Occaſion, Lady *Jane* uſed to take Tea Morning and Afternoon. But now ſhe, who on the Road to *Paris* could not live with their Fellow-Travellers, and, upon various Occaſions, ſeems to have been rather nice about her Eating, falls at once into this miſerable Way of Living, when ſhe had it in her Power to be better accommodated. P. P. 913. D.

But to prove that, however improbable, the Thing was certainly ſo; the Purſuers undertake to ſhew that the Names of every Body, who came to the Houſe, are to be found either in the firſt *Livre du Depenſe*, or the ſecond, which was produced on the 30th of *July*; and conſequently, to ſhew that Madame *Godefroi* was miſtaken when ſhe ſaid, that in her Inn, like every other, the Gueſts might have whatever they pleaſed to call for; a ſtrange Outſet! when a Party is compelled to give up either his Caſe, or his Witneſs.

In the ſecond Place, they undertake to ſhew, that the two anonymous Accounts, which run from the fourth to the ſeventh, and from the ninth to the fourteenth, relate to Sir *John*, Lady *Jane*, and Mrs. *Hewit*, which will prove, that in Point of Fact, they did live at the *Table d' Hôte* Rate; and that ſo ſtrictly, as to go without Breakfaſts, or any other Accommodation, but better Burgundy than the Ordinary.

That the Houſhold-Books contain Accounts for all thoſe who entered the Houſe, is argued by the Purſuers, 1. From the Uſe and Neceſſity of keeping ſuch an Account-Book exactly, or their Affairs would ſoon run into Confuſion. 2. From the Exactneſs of it appearing on the Face of the Book. 3. From the Manner of keeping it, as depoſed to by the *Godefrois*.

1. If this, or any ſuch Book, were all that a Man of Buſineſs kept, his Affairs would, indeed, run ſoon into Confuſion. The Book is talked of as if it were a regular Account of Expences, kept for the Sake of drawing ſome general Concluſion from, or making up ſome Balance upon it; whereas, in Fact, it is nothing more than a *Waſte-Book*, conſiſting of looſe, unconnected Memoranda; and the utmoſt Uſe of it was to have ſome certain Place, where ſuch Memoranda might be found, as often as wanted, to make out other Bills from; this Practice was convenient, and eaſily managed with reſpect to their *Table d' Hôte* Gueſts, becauſe the Date of the Entry would be the principal Article, and the reſt of the Furniſhings few: But this would prove a very impracticable Method of keeping the Account of all the irregular Furniſhings; for the Buſineſs of reporting them to the Book-keeper would be as much as the Attendance in ſupplying them to the Gueſts. This will at once account for the ſix or ſeven ſmall Articles, which the Purſuers mention as Proofs of Exactneſs, and alſo correſponds with the whole Tenor of the Book, in which there are no Accounts but of thoſe who lived at the Rate of the Ordinary.

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To intercept the Concluſion, drawn by the Purſuers, it is ſufficient to ſhow, that thoſe who lived at an extraordinary Rate are not found in this Book; but there are many other Circumſtances, even at this Diſtance of Time, and under the partial Uſe they make of it, and the Want of all Opportunity to examine it on the Defender's Part, which ſhew the Concluſion not only inſufficiently drawn but abſolutely falſe.

It is very uſual at Inns for the Perſon, charged with the Care of attending on particular Gueſts, to make their Memoranda on looſe Papers in their own Pockets, and carry them into the Maſter, nay, even in the Caſe of Gueſts at the Ordinary, if the Book were not at Hand, or the Maſter or Miſtreſs out of the Way, the Entries would be made on other Papers, and they would be put looſe into the Book; nay further, when ſuch a Book were at Hand, rather than begin a new Page, or have the Chance to encroach too near on an Account already begun, and which was expected to laſt long, the Entry would be inſerted in a ſeparate Paper; and ſuch Papers would ſometimes be written over again in the Book, when the Account was expected to continue a conſiderable Time current, otherwiſe the looſe Papers would be ſufficient Memoranda without tranſcribing.

And that theſe are not Imaginations thrown out at Random (though, if they are poſſible, it is enough) is now manifeſt; becauſe in the ſecond Book, which was produced ſomewhat ſuddenly, (to anſwer an Objection which will be mentioned preſently) there were found ſome looſe Papers, appearing to be the Accounts of Perſons who were not entered into the Book, and are not charged in the ſame Manner with thoſe whoſe Accounts are entered in the Book; and in all the Books there are many apparent Tranſcripts of different Accounts, written with the ſame Hand, Ink, and Pen, and plainly at the ſame Time; theſe, conſequently, would not have been found in the Book at all, if they had chanced to go away before it was thought convenient to tranſcribe them.

How the reſt of the looſe Papers in the firſt Book were diſpoſed of, whether accidentally thrown away, or whether it was not thought material to trouble the *Tournelle* with Articles which only tended to confound the Proof intended, is not worth enquiring, in a Caſe where the Books, as they ſtand, afford nothing like Evidence of the Point they are adduced to prove. From the very Manner in which *Godefroi* deſcribes the Books to have been kept, it follows neceſſarily, that ſome of the Accounts muſt have been taken on looſe Papers. It was obſerved, that Accounts in this
P. P. 840. D. exact Book did not follow each other in the Order of Dates. This, ſays Mr. *Godefroi*, happens thus: When one Name is entered on a Page in the Book, and his Account in the whole Curreney of it does not exhauſt the Page, upon the Payment of his Bill, and Termination of his Account, another is inſerted in the Part of the Page which remains Blank. This, though an extraordinarily clear Account of the Uſe, Neceſſity, and Exactneſs of the Book, which is to ſave his Affairs from Confuſion, proves, that ſuch Entry muſt have been tranſcribed from ſome other Paper kept in the mean Time; for Inſtance, an Account ran down to the 2d of *October* 1751; it was paid, and the uſual black Line with Croſſes was drawn under it. The Account of one *Chevalier* began immediately after on the 30th of *September* in the ſame Year; ſo that the Articles of *Chevalier*'s Account muſt either have been kept on another Paper, or by Memory, from the 30th of *September* to the 2d of *October*; and there are great Abundance of ſuch Inſtances conforming to M. *Godefroi*'s Repreſentation. Again, Pag. 111 of the *Livre du Depenſe*, begins with the Account of *Voiard*, on the 20th of *March*; and that Page was left, according to *Godefroi*'s Idea, for the Account which was to be current: Pag. 112 begins with the Account of one *Fontin*, on the 12th of *March*: The intermediate eight Days Account, according to the Explanation of the Witneſs, muſt have been preſerved on other Papers, ſuch as thoſe actually found in the ſecond Book.

If this Idea of Memoranda kept in ſuch a Way wanted Confirmation, there is yet further Evidence of it. That little Book of Police, in which they inſerted, when they pleaſed, about a fourth Part of the People who came to the Houſe, proves two Propoſitions deſtructive of any ſerious Application to be made of the Houſhold-Book: Firſt, that many Names which are found in it, have not Accounts opened for them in the Houſhold-Books, till many Days after they appear by the Police-Book to have entered. For Inſtance, one *Sarrazin* was entered ſome Days before the 7th of *July* 1747, on which Day there is a *Viſum* of the Inſpector ſubſcribed with his Name; his Account is opened on the 25th of that Inſtant, from which it appears, either that he had not lived at the Rate of the Ordinary for the firſt eighteen Days, or at leaſt, that his Account muſt have been preſerved on ſome other Memorandum than the Book in Queſtion. The Purſuers ſay, that as the Entry itſelf is not dated in the *Livre de l'Inſpecteur*, and is only collected from the *Viſum*, the Officer may have forged the *Viſum* at ſome ſubſequent Time. This is a Crime for which the Officers would be ſent to the Gallies, and the Purſuers convict him juſt as they do Sir *John*, Lady *Jane*, &c. &c. &c. &c. &c. &c. upon the old Argument: He *may* have forged, therefore, he *did*. And yet, if the Officer did nothing but forge, it would not help them; for one *Menezet* is entered in the *Livre de l'Inſpecteur*, with his Date the 28th of *July*; the *Viſum* of the Officer is on the 1ſt of *Auguſt*; and yet this Account is not opened till the 3d of *Auguſt*; therefore he muſt have apparently had another Account of one Sort or other than is contained in the Houſhold-Book.

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The Anſwer to this, is, that Mr. and Mad. *Godefroi*, though the exacteſt People alive in their *Livre du Depenſe*, made a Miſtake in the Date of their Entry in the *Livre de l'Inſpecteur*. But if ſuch an Error could be ſuppoſed, conſiſtent with the neceſſary Exactneſs, whereupon this invariable Rule of entering all their Gueſts on the very Day they come is to depend, it yet would not do, becauſe the *Viſum* on the 1ſt of *Auguſt* ties them down to that Date. Here again the *Viſum* is forged, and this abſurd, inadmiſſible Plea is to diſpoſe of a Variety of Inſtances wherein the Police-Book abſolutely negatives their Propoſition, That all the Gueſts had their Accounts immediately opened in the *Livre du Depenſe*, and yet the Police-Book has not Numbers ſufficient for above a Half of the Gueſts actually entered in the *Livre du Depenſe*.

But further, the *Livre de l'Inſpecteur*, ſhort as it confeſſedly is, of the real Number of their Gueſts, furniſhes above thirty Names who have no correſpondent Accounts; which alone is enough to prove that a very large Proportion of thoſe who reſorted to the Houſe had their Accounts kept in ſome other Way; for the Purſuers, who are obliged to argue that the *Livre de l'Inſpecteur* was kept with much leſs Diligence than the *Livre du Depenſe*, muſt, to be uniform, and admit, that though Multitudes found in the laſt are omitted out of the firſt, there can be none in the firſt who are omitted in the laſt.

Upon this they ſay, that *Twelve* of the Thirty have correſponding Articles in the Houſhold Book, of the ſame Date with their Entry in the *Livre de l'Inſpecteur*, though their Names are not inſerted. The firſt Difficulty which meets them in forming that Sort of Correſpondence, is to adjuſt how it came about that in the *exact* Book, they did not know the Name, and were obliged to inſert a Denomination which ſuited all their Gueſts equally; and yet at the ſame time, and ſome of them in the ſame Hand, they ſet down the Names in the *leſs exact* Book. This the *Godefrois* ſay *never* happens to the *Livre du Depenſe*, therefore theſe twelve have no correſpondent Articles.

They further argue that ſeveral more have correſponding Articles, though not of the ſame Date. Nay, they are obliged ſometimes to go a Month backwards for an Account, in order to ſupply the apparent Deficiency of Correſpondence in ſuch Articles. The blank Accounts they chuſe are frequently taken by arbitrary Choice out of many others which would apply as well.

And after all this Latitude of ſupplying Articles, without the leaſt Evidence of Correſpondence, to ſuch Names as they chuſe to affix to them; it is wonderful, that they themſelves ſtill allow *fix* Perſons to whom they cannot bend even the blank Articles; and many more are equally clear; ſo that they muſt doubtleſs have had their Accounts elſewhere. But the Purſuers, juſtly thinking their whole Hypotheſis overthrown, if even that ſmall Portion of their actual Gueſts, who are mentioned in the Police-Book, cannot find correſponding Articles in the Houſhold, ſuppoſe, upon this, that they came in over Night, after Mad. *Godefroi* was in Bed, and went away the next Morning: And that ſuch Accidents may happen, they cite Mad. *Godefroi*, who ſays, that ſuch may not be entered; but ſhe confines it only to thoſe who *uſually* come there, and who are at no Expence but their Night's Lodging. Now in the Number of thoſe who have no Account in the Houſhold Books, there happen to be ſome Strangers, nay, ſome Foreigners, nay, *Engliſh*; and ſhe does not allow that ſuch could come without their Names in her Books. But admitting this might be, how came their Names in the Police-Book? Is it to be *ſuppoſed* that in the leſs exact Book, they would put thoſe down whom they did not think to inſert in the more exact? The Purſuers *ſuppoſe* they *may*, particularly Foreigners and Military, about whom the Police is more ſtrict; and yet it happens there are many Foreigners and Military in the Houſhold Book who are not in the Inſpector's. But what effectually deſtroys this Argument is, that ſeveral of thoſe Perſons who are allowed to have no Account in the Houſhold Book, are entered in the Police-Book, by Mad. *Godefroi*'s own Hand; ſo they could not arrive after ſhe was in Bed, and be gone in the Morning.

Hitherto, proceeding even upon the narrow View of the few Names contained in theſe Books, great Numbers have been pointed out which had not their Account at all in the Houſhold Book, and many others, whoſe Accounts there, did not commence till many Days after their Entry. Many others of the laſt Claſs have been demonſtrably pointed out from the Houſhold Book alone, following *Godefroi*'s own Account of it; after which how is it poſſible to inſiſt that all the Gueſts, excepting none, are inſerted in that Book; and from thence to infer that a blank Account, no otherwiſe applicable, relates to any Perſons in particular?

But, upon a wider Scale, it appears, that if the Houſhold Book is ſuppoſed to contain all the Gueſts who lodged in this Inn, inſtead of being *frequented*, it was never *One half full*. The Calculations fall much under; and it is even Matter of Demonſtration, that on the 4th of *July*, 1748, there were no more than two Perſons beſides Sir *John* and his Family: The viſible Expence of the Houſe would have exceeded their Receipts; and all the Apartments in the Houſe, which appear from the Books to have been poſſeſſed, lett out, as their's were, at Ten Sols

each

each a Night, would have raiſed Five Hundred Livres leſs than the Rent of the Houſe, which was One Thouſand Four Hundred Livres a Year.

But it is agreed on all Hands, that this *Hotel* was exceedingly frequented, inſomuch that many were turned away becauſe no Room could be found for them, and People uſed to beſpeak Apartments there before-hand. In reſpect of the great Reſort there, the Houſe has been enlarged from Fifteen Rooms to Twenty-five, beſides Cloſets; and the Rent from One Thouſand Four Hundred to Three Thouſand Livres a Year.—At the Time in Queſtion, the 4th of *July*, it was ſo much frequented, that Sir *John* and his Family were beſtowed in Two Rooms over a Place which is no N the *Remiſe*. The Purſuers cavil upon the Expreſſion of their own Witneſſes, and affect to doubt whether *full* does not mean *half full*; or, perhaps, *a third Part full*, may ſatisfy the Word; but their Comments upon this Part are not worth tranſcribing. It is impoſſible that *Godefroi* would have augmented his Houſe Ten Apartments more, and as many Cloſets, and paid ſo high an additional Rent, if the Houſe he formerly poſſeſſed had never been once near full for Four Years before, and he was ſuſtaining Five Hundred Livres a Year of Loſs by the Houſe he then had. The Purſuers too know, that at the Time in Queſtion the Houſe was quite full, and that a reſpectable Perſon from *Troyes*, who arrived there on the 21ſt of *June* 1748, was lodged, on Account of the Fulneſs of the Houſe, in a Third Story, which he complained of till he was told it was the only empty Apartment in the Houſe. He left the Inn on the 6th of *July*, and returned again on the 9th, when it is believed he was put into the very Room where the *Godefrois* ſuppoſe Lady *Jane* to have ſtaid till the 14th. But without going out of the Evidence, their own Witneſſes deſcribe it ſo; the Conſequence of which is, that the Houſhold Books, which do not contain Gueſts enough to fill One Half of his Houſe in general, and at the Time in Queſtion but Two Gueſts beſides Sir *John*, cannot contain the whole Number of their Gueſts.

To this the Purſuers ſay, that it is impoſſible to calculate the Number of People at the *Table d'Hôte* at any particular Time, becauſe many of the Accounts belong to thoſe who took no Extraordinaries, and then there is but One Article, *viz.* that of their Entry: The Account was paid without caſting up the Time, and conſequently it cannot now be known how long they ſtaid. To ſupport which it is neceſſary to ſuppoſe, that People live at an Inn for ſix Months together, which is not according to common Experience; but the whole Obſervation is founded in a Miſtake, for *Godefroi* has pointed out a Way by which the going out may be come at pretty nearly. —As far as he ſpeaks Truth, the Date of the following Account marks the Day beyond which they could not have ſtaid; and by that Way of calculating, on the 4th there were no more than Three Perſons beſides thoſe who are ſuppoſed to be Sir *John* and his Family. But, whatever was the Number of People appearing to be in the Houſe by the Houſhold Book, on the 4th of *July*, they maintain that a Third of the Houſe full is a Miſrepreſentation of the general Number; to prove which they ſhew, that on the 29th of *July*, there were Eleven Perſons in the Houſhold Book. This neither proves that there were more than Three on the 4th, nor that even the Houſe was more than a Third full the reſt of the Year.

CHAP. VII.

Obſervations upon the Aſſiſtance which Godefroi's *Memory is ſaid to have from the Books.*

THE Purſuers argue, that however the *Godefrois* may have forgot all Sorts of particular Circumſtances, and how improbable ſoever their Account may appear, they yet muſt know the Manner of keeping their own Accounts, that being Matter of daily Practice and Habit; and they have ſworn that all their Gueſts are borne either by Name or otherwiſe, on their Houſhold Books.

It is a great Attempt to make out, by Argument, that any Witneſs is able to prove a Thing to be the very Reverſe of what it appears. It would be full as eaſy to prove a Camel to be a Horſe, (ſhewing the Animal at the ſame Time) as to prove that this Houſhold Account is like the Thing they repreſent, an Account taken inſtantly of all their Gueſts in ſuch an Inn, ſo thronged as they deſcribe it.

As to the Neceſſity which they contend of their remembering the *Method* in which their Books are kept, the firſt Sight of the Books makes the Argument ridiculous. What is the *Method* of a Book which conſiſts of nothing but looſe, independent, unconnected Memoranda, wherein no one has the ſmalleſt Relation to the other, and no Ballance, or Concluſion of any Kind, is intended to be drawn from the Whole? The ſeveral Articles are daſhed in, for the Sake of current Memory, in any Part where a Blank is to be found; therefore, the Thing they have to remember, is not any *Method* of keeping their Books, but the particular Facts; and thoſe in ſo minute a Way,

as

as that neither they, nor their Servants, ever did put down a Memorandum in any other Way, or on any other Paper than in thoſe individual Books: And it is manifeſt, that whoever will ſwear ſo, in direct and unqualified Terms, to their Tranſactions of Seventeen Years ſtanding, muſt, at beſt, ſwear very raſhly.—That Mad. *Godefroi*, or ſome of the Family, did generally ſcore, for their current Memory, in ſome Way or other, the Articles furniſhed to the Gueſts, is very probable.—In the Subſtance, therefore, her Oath may be true; but that it is true in Form and Circumſtance, and that ſo preciſely, as to exclude the Poſſibility of a Score being noted and remembered in any other Way, for four Days, in the Inſtance of ſuch People as ſhe owns ſhe did not expect to ſtay, cannot be. If the Thing had happened to be ſo in Fact, ſhe could not have ſworn true, becauſe her Memory could not have gone to it.

But without repeating the Proofs above-mentioned, that all thoſe who did not eat at the Ordinary are omitted; that ſeveral Accounts of thoſe who did eat at this Table are tranſcribed, after being kept elſewhere for ſome Days, who conſequently would have had no Account in that Book at all, if they had gone away in three, four, or five Days: That it appears, even from the State of the Cuſtom belonging to the Houſe, that great Numbers muſt have had their Accounts elſewhere; and even, from the ſhort, imperfect Liſt of Gueſts in the Police-Book, that many particular People actually had their Accounts kept elſewhere. Without repeating this, it appears, from the Depoſitions of the *Godefrois* themſelves, that they really had no Memory of their Method of keeping their Scores, or rather, that they had no one Method of keeping them to be remembered; for when they were examined in *May*, all this exact Keeping of a Memorandum Book was applied, in the ſame peremptory and decided Phraſe, to one Book, namely, that which was depoſited in the Office of the *Tournelle*. It occurred to the Defender's Agent, in the curſory Manner of running over the Book, which was allowed him at the *Greffe Criminel*, that the Articles contained in that Book could never amount to the Number of Gueſts which apparently had frequented the Inn in 1748; and he told *Godefroi* of the Circumſtance, and deſired him to ſee whether he had no other Book, or Memoranda. *Godefroi* denied that he had any more; but the Purſuers happening to think the Objection worth attending to, prevailed on him to produce one Book more, in which there were other looſe Memoranda of Scores kept in the ſame Way. Mr. *Godefroi*, in producing this Book, ſays it was kept for Perſons who ate, but did not lodge; and for Lodgers, who being his Relations and Friends, were charged at an under Price.—Who are Mr. *Godefroi*'s Relations, or whom he honours with the Name of Friends, muſt reſt, as it does, a Secret; but in the mean Time, the Book proves that M. *Godefroi* was quite impartial in his Manner of charging them, for they ſtand at exactly the ſame Rate as other People.

From the Time of producing this laſt Book, the Argument has been changed, and adapted to two Books inſtead of one.—All the ſtrained Inferences, whereby they offer to apply their Blanks to the Names in the Inſpector's Book, were made upon both. Even the Argument of *Uſe*, and *Neceſſity*, was applied to both Books; but not to both as they really appear, but as they were falſly repreſented by *Godefroi*; by which Means it proved *neceſſary* for them to keep, not only the Books which they produced, but others. For Inſtance, the Purſuers find it *neceſſary*, that Mr. *Godefroi* ſhould be cunning enough to conceal from one Sort of Gueſts what another Sort pays; and to that Piece of Dexterity it was *neceſſary*, that his own private Memoranda of thoſe different Accounts which are not ſhewn the Gueſts, ſhould be kept *diſtinct*. The private Memoranda are produced, and are found not to be *differently* kept; then, if Mr. *Godefroi* is right in this Idea, he has ſtill other Books which are kept conformably to it. And if he was ſo cunning as to take this Method of concealing from thoſe who paid three Livres, what others paid at a lower Rate; why ſhould he not have been as dexterous to conceal from thoſe who paid more than three Livres, what his general Rate of charging was? The Purſuers ſay, that was not *neceſſary*; but it was at leaſt *neceſſary* to keep their Score ſomehow, which has not been done at all, unleſs he made ſuch Memoranda on ſome other Book or looſe Papers.

It is remarkable, however, that though M. *Godefroi* produced the ſecond Book, and gave a falſe Account of it by himſelf, his Wife, who actually kept it for the moſt Part, was not ſhewn it on her Examination, and ſwears as if ſhe had never ſeen it, repeating the Account ſhe had given before, and applying it to the only Book before her, the ſame ſhe had ſpoken of before. If the Purſuers argue that the Phraſe of her Depoſitions muſt be underſtood with ſome Allowance; that ſhe did not mean to confine herſelf to one individual Book, but referred to ſome Book or Books; the whole Amount of her Evidence is, that ſhe kept Memoranda of current Scores, but does not remember how.

But here the Purſuers reſort to a very curious Argument, namely, That if there had been any more Gueſts in the Houſe than thoſe who are contained in the two Books, the Defenders might have hunted them out. Really this ſeems to have been an *old* Idea of the Purſuers, and the very Thing they were afraid of, before the Examinations of Witneſſes was cloſed; and this accounts for their withholding the Books ſo long. It muſt be acknowledged, that both Books were imparted to the Defender by the *Favour* of the Purſuers. The firſt *Favour* was a little ungraci-

ouſly beſtowed; for they ſhewed they never meant it till the Perjury, upon which their firſt Hopes ſtood, was detected; and then they put it off as long as poſſible; and ſhewed it under ſuch Reſtrictions, as made it of the leaſt Uſe poſſible: The ſecond *Favour* came juſt two Days before the Production of it; late on *Saturday* Night it was announced, and on *Tueſday* Morning *Godfroi* was examined. But this was not meant for ſerious Argument; it was a Flirt of Triumph upon the Embarraſſment they had been cunning enough to involve Juſtice in.

Perhaps if there had been Time for making ſuch Enquiry, it might have appeared, from Teſtimony more credible than the *Godefrois*, that, at the Time in Queſtion, the Houſe was full, and that the very Room, he aſſigns to Sir *John* and his Company, was empty ſome Time between the 6th and the 9th; and that a Gentleman who had been ill lodged, from the Throng in the Houſe, went away on the 6th, and was furniſhed with the Room over what is now the *Remiſe* on the 9th. Perhaps Numbers of thoſe who are named in none of their Books, might even now be found to prove that they were in the Houſe at different Times. But really the Caſe does not require any more Proof, that there were many Gueſts in that Houſe, at ſundry Periods, whoſe Names do not appear in either of the Books; and that the Memory, which the *Godefrois* pretend to, is, not only from the very Nature of the Thing they ſpeak of, fallible, but has turned out actually falſe; when what they ſwore on the 3d of *May* concerning the firſt Book, was diſproved by what *Godefroi* afterwards ſaid on the 30th of *July*, when he produced the other.

If, after all this, there be that Man living who will infer that the two Accounts of the 4th and 9th belong to Sir *John* and his Family, merely becauſe thoſe looſe and imperfect Jottings in their two Books ſupply no other, which does apply, it is not imaginable what Sort or Degree of Evidence would be ſufficient to correct ſuch a Conceit.

CHAP. VIII.

Anſwers to Obſervations of the Purſuers, that the Contents of the two Accounts make them applicable to Sir John *and his Family.*

IT is no Wonder the Purſuers argued the laſt-mentioned Idea with ſuch carneſt Aſſiduity, and wrote ſo many Volumes upon it; for as long as it is poſſible to ſuppoſe, that any other Soul was in the Houſe to whom the two Accounts could be applied, Nobody living will believe they apply to Sir *John*, Lady *Jane*, and Mrs. *Hewit*. However, the Purſuers, who are uſed to argue what Nobody living will believe, undertake to prove, from the Contents of the Accounts, that they apply to them, and cannot poſſibly apply to any Body elſe. Their Topics are, that they arrived on the Evening of the 4th; were three in Number; had no Servant; and were entered in the Police-Book: On the other Side, no other ſuch Company appear in the Police-Book.

As to no other ſuch Company appearing in the Police-Book, that cannot be thought wonderful, when that Book does not contain above one-half the Number of the Houſhold-Book, which contains leſs than a Third of thoſe which muſt have been there, to make the Houſe full, as the Purſuers own Witneſſes have deſcribed it; and there is no Difference between the two Books (as indeed how could there be between any Books ſo kept). They mention as a Circumſtance of Surprize, that Sir *John* and his Family ſhould be in the Police-Book, and another Company of three ſhould not: But it ſhould be remembered, that Sir *John* was not entered there till the 7th; and it is abſurd to bid the Defender prove the Entry of another Company correſponding in thoſe Particulars, when there are no Materials extant, whereby to prove, in any Degree, what Company did reſort to the Houſe: But it appears from many Parts of the Houſhold-Book, compared with the Book of Police, that, of ſeveral Companies which came in at the ſame Time, ſome have been entered, and ſome not; owing, it may be imagined, to what happened in the preſent Caſe, that the Names of ſome were known, as Sir *John Stewart*'s was, and of others not. The accidental Coincidence of Time, Number of Perſons, no Servant, is a Thing of ſuch frequent Occurrence, that it raiſes not even a *Suſpicion* of their being the Company.

But it does not appear from that Entry, that the Perſons to whom the Accounts relate ever were in the Houſe; their Bill is exactly what it would be if three Perſons had been living at a Lodging which did not furniſh Eating, and had eat at the *Table d'Hôte* of the *Hotel de Chaalons*.

Nor does it appear, if it were proved that they lodged there, that they had no Servant, but only that their Servant, inſtead of being kept by them, was at Board Wages, as the *Valets du Place*, the uſual Sort of Servants to Travellers in *France*, always are: And this Want of Servants may be proved on many other Companies in the ſame Way.

Nor

Nor does it appear that they entered on the 4th; for even in the imperfect Books which remain, there are many Inſtances where the *Livre de l'Inſpecteur* ſhews People to have come in many Days before the *Livre du Depenſe* takes any Notice of them, becauſe their Scores were kept elſewhere. The People may have been in the Houſe many Days before the 4th, and do no Violence to the Memorandum Book, which does not pretend to be the Account of all the Gueſts.

It appears probable enough that each of the Companies, to whom one or both Accounts relate, conſiſted of three Perſons, becauſe the Price of the Wine refers to the Rate of the Ordinary, as it appears throughout that Book; but if it were material to diſpute it with them, they have no earthly Proof that the two Accounts relate to the ſame Company. The only Ground, they give out for ſuppoſing it, is, that both Accounts relate to Companies conſiſting of three; and if perfect Accounts had been preſerved, ſo might forty Accounts more. Theſe two Accounts, however, are diſconnected by every Note of Difference which ſhews any two blank Accounts in the Books to belong to different Companies. The firſt runs to the 7th, and has the common Mark of the black Line and Croſſes, which prove it to be paid off then: Upon that, there is no Room to ſuppoſe it current an Hour farther. The ſecond begins on the 9th, and has no Reference whatever to the firſt, which ended on the 7th, and ſeems to have been cloſed before Supper, for they drink three Bottles of Burgundy every full Day; two on the firſt half Day of the 4th, and two on the laſt half Day of the 7th.

Again, the Company in the ſecond Bill muſt have paid their Account, at ſooneſt, after Supper on the 8th, but more probably on the 9th, when the *Recommencé* is dated, which is connected with the *Payé*. Now, if the Bill was paid upon the 9th, it is certain the Account of the 8th muſt have been ſcored ſomewhere; or if it was paid on the 8th after Supper, the Wine furniſhed at Dinner muſt have been ſcored ſomewhere: And both theſe Obſervations have double Force, as the Supper of the 7th is not marked. The Interval of a Day appears in none of the numerous Accounts where the Gueſts, who continued in the Houſe, paid his Score at different Times; but the Score cleared off, connects perfectly with that begun again, which is not the Caſe here. The firſt Article in the ſecond Bill, is a Bottle of Wine, at the full Price of twenty-four Sols, which had been forgot on the 8th *at Supper*.—If the Company in the ſecond Bill had both dined and ſupped at the Houſe, or had been in the Houſe before Supper, the Bottle would not have been ſaid to be forgot at Supper, becauſe the Price was computed upon the Allowance for the whole Day.

The Article of Butter is thought by the Purſuers a diſtinguiſhing Proof, that the Company was *Engliſh*; if ſo, theſe two Companies were of different Nations.

But as there is no Reaſon to ſuppoſe, that either of the Bills relate to Sir *John Stewart* and his Family, this Queſtion is not worth purſuing any farther: It was mentioned only to ſhew how ready this Inn-keeper has been to combine Things which have no Connection, in order to rear a falſe Caſe up for the Purſuers.

Every Circumſtance conſpires to prove, that neither of the two Accounts can relate to Sir *John*, much leſs both, which is neceſſary for the Syſtem now adopted by the Purſuers.

They argue, that, becauſe one Perſon only appears to have paid, there muſt be Women in Company.—It is of no Kind of Conſequence whether the reſt of the Company were Women or not, unleſs it be previouſly proved, that in the Month of *July* 1748, there were but two Women exiſting, and thoſe in the Poſſeſſion of Sir *John Stewart*. And yet even this, if it be a material Circumſtance, does not appear; for nothing is ſo frequent in Practice as for one Perſon, in the Company of ſeveral Men, to pay the Reckonings: And this Practice, if it wants Proof, appears from Abundance of Inſtances in the Books now under Conſideration.

On the other Hand, whatever Uſe there is in ſuch Memoranda, they require that different Perſons ſhould be diſtinguiſhed by Deſcription of ſome Sort from each other. The Word *Monſieur*, applied to all, would amount to no particular Deſignation, but leave it altogether uncertain to whom the Articles had been furniſhed. Accordingly, throughout the Book, it appears, that, where the *Name* is known, it is put down; where the *Quality*, *Office*, or *Employment*, and not the *Name* is known, that Sort of Deſcription is uſed, as *Monſieur Officier du Regiment d'Orleans*; where they are of different Sexes, that is put down *Monſieur et deux ou trois Dames*;---where the Relation is known, that is put down *Monſieur et ſon Epouſe*, or *ſa Sœur*, or *ſa Fille*.---Hundreds of Inſtances have been extracted to this Effect, in the former Publications, with more Labour than the Occaſion ſeems to require; for the obvious Neceſſity of ſome Deſtination to refer the Account to, proves that they muſt have uſed it.

Now Sir *John* was addreſſed to *Godefroi* by the Deſcription of "*Colonel Ecoſſois et deux Dames*." Following their univerſal Cuſtom, they would at leaſt have availed themſelves of that Deſcription. *Godefroi* went to the *Barrier* to take Care that their Baggage was not ſent to the Cuſtom-Houſe, which moſt

likely informed him of their real Names. Their Sex was certainly known; it was their conſtant Practice to mention that; but neither of theſe Accounts ſuppoſe any Women.—On the 7th of *July*, at lateſt, Sir *John*'s Name was known, and that Lady *Jane* was his Wife: Following the conſtant Practice, it would have been inſerted, had the Accounts been his.—On the 9th, Sir *John* is ſuppoſed to begin a new Score, in which Caſe the Name would doubtleſs have been put down; yet the ſecond Account applied to him is alſo blank; and the ſleeveleſs Reaſon given for it is, that Madame *Godefroi* might not think it worth While to put down the Name, though ſhe knew it, becauſe ſhe thought he was to ſtay but little While. If all the Books were produced, and if his Name really appeared in none, it might have accounted for opening no Score for him at all, but will never do to prove that ſuch *exact* People opened a Score for one whom they knew by Name, without putting his Name at the Head of it; and the paying and beginning again rather proves, that the Perſons meant to ſtay ſome conſiderable Time.

The Purſuers have put themſelves to ſome Trouble to ſhew that Lady *Jane* uſed to take Tea Morning and Afternoon, and eat Bread and Butter with it; for which Purpoſe they have gone to *Aix* for a Witneſs, though it was proved to their Hands much nearer Home, if they were not aſhamed to go to *Michel*'s for Proof; from which they argue, that the ſecond Account, which they affect to call the Second Part of the ſame Account, muſt relate to Sir *John* and Lady *Jane*, becauſe a Livre is ſtated for Butter from the 9th to the 13th. So that ſingle Word *Butter* is to ſtand for *Tea*, *Cream*, *Rolls*, *Wood to boil the Water*, &c. which make diſtinct Articles in the Scores of thoſe who breakfaſted; for it will be remembered, that the Rate of the Ordinary did not include Breakfaſts. Now if this Argument is well founded, it goes to exclude the firſt Bill altogether, in which there is no ſuch Article as Butter, and proves that their anonymous Company did not come till the 8th. The Argument is well founded, and proves that neither of the Accounts can relate to Lady *Jane*, by that very remarkable Difference from her conſtant Habits: As far as the Thing can be traced, ſhe never diſpenſed with Breakfaſts, or Tea, both Morning and Afternoon. This is ſolved by the Purſuers with the utmoſt Eaſe, only by ſuppoſing that ſhe ſent one of the Waiters of a Houſe, where ſuch Things were furniſhed, to ſome Coffee-Houſe, that is, to a Houſe where they are not furniſhed; or, more abſurd ſtill, that ſhe brought her Tea along with her.

When the Argument runs ſo low on the other Side, it is not worth preſſing it further. Many other Circumſtances will ſpring to every Perſon's Obſervation. The Poſtage of the Letters which were ſent to Sir *John* on the 10th, or at leaſt the 18th of *July*, coming when confeſſedly not there, muſt have been put down to this Account. The Wine charged in the Scores, now applied to Sir *John*, are different from thoſe he uſually drank, as appears by the Account of the 8th of *Auguſt*, where he treats himſelf with Champagne.

CHAP. IX.

Obſervations on the Memory of Godefroi *combined with their Book.*

IF the Books fall ſo ſhort of the whole Number of Gueſts, and be ſo inaccurately kept, and ſo ill remembered by the *Godefrois* as to afford no Shadow of Preſumption that their Names *muſt* be there, nor even of Expectation to find them there—if the two Scores which are put upon Sir *John* and his Family, inſtead of ſeeming to ſuit them, do, by their Contents, abſolutely repel ſuch Application of them---if the *Godefrois* remember, after all their Diligence to recollect, no other Paſſages of that Period, none of the other Gueſts then in their Houſe, not even what Servants they kept at the Time---what one Article had he to remember them by? That they were Foreigners, is given as a Reaſon for taking leſs Notice of them. That theſe were Ladies, if the *Godefrois* really thought it ſingular, is proved by their own Books to be an Inſtance of wanting Memory. That *Maillefer* recommended them is ſtated by himſelf as a probable Inference, not as Memory; nor does he recollect a Tittle of what happened in Conſequence of it, nor even *Maillefer*'s other Letters on the ſame Subject. That the Bill is paid and recommenced, if it were true, which it is not, is no more than happened in Abundance of Inſtances more. And the Story of the Bugs, (which he has told in a Way that cannot be true) if it were true, contradicts the Inference he draws of connecting the Scores; for the ſecond Account begins at the ſame Inſtant the firſt, whatever it was, is paid. The Bill in *Auguſt* could not be connected, by Inference, with the two in *July*. It was a different Number of Perſons; the laſt was furniſhed with different Sorts of Wine from the firſt; and Sir *John*'s coming from *Dammartin*, if *Godefroi* had remembered it, (which he certainly did not for the Reaſons given before) has Nothing in common, or which connects in any Way, with the two blank Scores. The Entry in the Police-Book is not till the 7th, and, as far as that goes, diſconnects the Accounts; and yet that is the Cauſe of Mad. *Godefroi*'s Memory, though it was not found till the Year 1764. They were examined to the other blank Articles, and without the *Livre de l'Inſpecteur* could not fill up one blank Article. Before that was found, ſome other Intimation was neceſſary; not to mention, that

with

with that Aſſiſtance, he could fill up but two out of ſeventeen: Add to this, that from the Year 1748 to the Year 1762, he had never heard Mr. *Stewart*'s Name.

But the Purſuers offer to raiſe his Evidence no higher than this; That he had a general Memory of ſuch Perſons in the Year 1748, and refer to his Books for the Time of their Stay. How far the Books fall ſhort of proving the laſt, has been ſtated; and Mr. *Godefroi*'s Memory falls ſhort of the firſt, if that would be ſufficient.

It has been ſhewn already, from the moſt authentic Proofs—viz. the Papers of the Purſuers---that *Godefroi* knew nothing of this for above three Months. Their preſent Syſtem obliges them to aſſert, that *Godefroi* remembered it from the Beginning. But what Evidence do they offer of that? None but ſuch as prove the direct contrary.

Godefroi, examined to it, ſays no more than this; That, when the *two Parties* came to him *at the Beginning of this Affair*, and aſked, Whether Mr. *Stewart* had lived at his Houſe in the Year 1748; and whether there was any Account in his Book for him and this Company? he recollected that Mr. *Stewart* and two Women had lodged at his Houſe in the Year 1748, and ſhewed him the two Scores of the 4th and 8th of *Auguſt*, as applying to them; and gave both Parties Inſpection and Copies of thoſe Articles. Meſſ. *Stuart* and *Buhot* came firſt, and *a little Time* after three other People came on the Part of the Defender.

It is not very probable that either of the Parties ſhould aſk after ſuch a Book, before they knew whether he kept any ſuch or not. He confeſſedly did not know how many ſuch Books were then current: He acknowledges alſo that he had no Thought of them before ſince the Year 1748: And the Purſuers ſtate, that he ſhewed it them before they thought of ſuch a Thing.

The Times he pitches upon, though deſcribed indeterminately enough, muſt have been at leaſt three Months after he had denied all Memory of ſuch a Circumſtance to the Purſuers; for the Applications, which he ſpeaks of, by the Parties, were at nearly the ſame Time (with the Interval of what he calls *peu de temps)*. Now the Defender's Agents were not called to *France* till the laſt Day of *December* 1762, nearly three Months after Mr. *Andrew Stuart*'s firſt Converſation with him; ſo that, conſiſtently with *Godefroi*'s Oath, the Purſuers repreſented their Caſe right, when they ſaid it could not be found out where Sir *John* was from the 4th.

Extrait de la Procedure Extraordinaire.

But what ſhakes Mr. *Godefroi*'s Teſtimony in this Particular much, is, that Mr. *D'Anjou* ſays Mad. *Godefroi*, when ſhe was examined in the *Tournelle*, depoſed *negatively* to all but this, that there was no Delivery in her Houſe, becauſe ſhe remembered nothing of the Perſons ſhe was queſtioned about; and in her Depoſition in this Cauſe ſhe puts that upon her not having the Police-Book. Now the Police-Book expreſſes them to have entered on the 7th, to have been only two, and was not pretended to be in the Way till 1764.

This Non-Remembrance on the Part of Mad. *Godefroi*, whoſe peculiar Charge was the Care of the Houſhold-Accounts and Gueſts, goes a great Way not only to ſhake the Faith to be given Mr. *Godefroi*'s Memory, whoſe Employment was generally all Day out of Doors, but introduces great Doubt as to the Time, when he pretends to have remembered; and abſolutely excludes the firſt three Months.

But what decides this Queſtion, is, that the Purſuers, who had the Whole of this Part of the Cauſe as much before them then as now, ſaw no Reaſon from that, whatever it was which *Godefroi* really told them at firſt, to ſuppoſe that ſuch Reſidence had been at his Houſe as they now pretend.

For this they have writ a long Apology of fourteen Pages, which they put at the End of their Memorial. They call it "An Anſwer to the Defender's Objection to their Conduct that they "have changed their Ground." They really miſtake the Defender altogether: He does not, he never has made any ſuch Objection to their Conduct. If he had, the Objection would not be confined to this Inſtance. There is not a Ground in their whole Caſe which they have not *changed*. Nay, as their Caſe now ſtands, there are few Arguments, from the Beginning of it to the End, which do not find their Contradiction in ſome other Part. He complains of the *Falſhood*, not of the *Change* of their Grounds: That after being *beat out of* one Ground, which they *from the Beginning* knew to be *falſe*, they have reſorted to *another*, which they knew *from the Beginning* to be *falſer*; and *therefore* preferred the *firſt*, till their Witneſs diſgraced it. And this is the Anſwer to their whole fourteen Pages of Apology, which ſuppoſes that *Michel*'s Ground had an Appearance, and ſuppreſſes their original Knowledge of the Falſhood of it.——They ſay nothing of *Andrew Stuart*'s Falſhood, nor of *Duruiſſeau*'s Perjury. Now theſe are the very Grounds, upon which it appears that, knowing Sir *John* was not at *Michel*'s on the 10th, nor could be proved there but by the Aſſiſtance of Perjury, they ſtill conſidered it as a more tenable Point than his Reſidence at *Godefroi*'s; which had leſs Colour than *Michel*'s, before the Perjury was applied to it.

CHAP.

CHAP. X.

Observations on the Claim of remarkable Truth, Uniformity, and Impartiality for Godefroi.

IT is in vain after this to talk highly of Mr. *Godefroi*'s *Truth*, *Uniformity*, and *Impartiality*; becauſe, allowing him all that he has proved, what Title has Mr. *Godefroi* to be talked of in that Manner? Without recapitulating the many Inſtances of Byaſs, and Zeal, which appear throughout his Teſtimony, the Miſapplication he made of the Story of the Bugs muſt have been wilful: The Repreſentation he gave of the ſecond Book, when the Purſuers made him produce it, was calculated on Purpoſe to convey this falſe Idea; that they did not keep looſe Memoranda; but that one Book was kept for the Purpoſe of one Sort of Gueſts, and the other for another; whereas the Books afford no ſuch Diſtinction, but both contain exactly the ſame Sort of looſe Memoranda: The ſwearing firſt that *one*, afterwards that *both*, contained the Whole of his Gueſts; when it is manifeſt, from going over both, that they do not contain much more than a Third: Not to mention the induſtrious Suppreſſion of Truth in the Account he gives of the Time of his firſt applying the two Accounts to Sir *John*, and the Prevarication he uſes in his firſt Depoſition, where he only ſwears that they ſtaid ſome Days in Summer 1748, forbearing to ſpecify how long, that he might not claſh with *Duruiſſeau*, who then took up Sir *John* from the 8th, and placed them thereafter at *Michel*'s.

Nor are theſe Obſervations at all taken off by the Queſtion of "What Inducement had he?" There are ſo many various Ways in which Agents may work up Witneſſes to Zeal, Partiality, Prevarication, and abſolute Falſhood, that it muſt be enough to prove thoſe Qualities upon them, without being obliged to trace how they came by them. When the Article in *their Memorandum-Books*, which relates to *Duruiſſeau*, is produced, one ſhall be better able to gueſs at *Godefroi*'s Inducements.

Much leſs are theſe Obſervations preſſed, by the Neceſſity, they are under of ſuppoſing ſome other Perſon equally abandoned. The imputed Reſidence at *Michel*'s helps them ſufficiently in that Reſpect.

But to inſiſt on Mr. *Godefroi*'s Impartiality was carrying the Thing a great Way indeed, when they know how he has behaved from the firſt. If the locking up the firſt Book in the *Tournelle* was not his Fraud, it would have been no more than impartial to have communicated the *Livre de l' Inſpecteur*, which he found in the Beginning of the Year 1764, and which was delivered to the Purſuers, and diſcloſed by them to the Defender's Agents juſt a few Days before this Examination. ——It would have been more impartial not to have denied the Exiſtence of a ſecond Houſhold-Book, as he calls it, to the Defender's Agents, and to diſcloſe it to the Purſuers, who acquainted the former with it juſt in Time before his Examination, to make the Information uſeleſs.——It would have been more impartial to have communicated *Mailleſer*'s Letters to the Defender's Agents; but the Purſuers were previouſly appriſed of them Time enough to ſend a Man away to rummage *Mailleſer*'s Papers: After which *Godefroi*'s Anſwers to thoſe Letters were not found, though others of the ſame Year not relative to this Buſineſs were. But enough has been ſaid about the Behaviour of a Witneſs, who, with every Degree of manifeſt Zeal and Byaſs, has left their Attack ſo unſupported.

They ſay further, that *Godefroi* has been uniform, which they prove thus: That he told the ſame Story to both Parties from the firſt. This is not true; and if it were, would not account for the firſt three Months they employed upon him, without ever learning where Sir *John* reſided the firſt four Days. 2. That one Abbé *Manen* was ſet upon him by the Defender to fiſh out a contradictory Story; and for this they very ſolemnly refer to their own Proofs, Page 470. c. which, when looked into, is no more than an Aſſertion of Mr. *Andrew Stuart*, deſerving as much Credit as his full Perſuaſion that the Entry in *Michel*'s Book was of Sir *John Stewart*'s own Hand. 3. Mad. *Guy* went to enquire after Mr. *Godefroi*'s Memory of Sir *John* and his Family in Summer 1763, at the Deſire of Mr. *Mailleſer*.—Mad. *Guy* was ſtruck with an Apoplexy ſome Time after, which impaired her Memory, but if ſhe had recollected, on the Examination, the Converſation which ſhe reported immediately after it happened, it would have been no Proof of Mr. *Godefroi*'s Uniformity.

But leſt Mr. *Godefroi*'s Credit ſhould ſtill lie under Suſpicion, they have the cleareſt Argument whatever in Support of it, namely, that he might eaſily have added the Word *Stewart* in the Blank after *Monſ.* Then it ſeems *Godefroi* ſwears falſely, when he ſays the Defender had Copies of theſe Articles from his Books. If that were true, it was impoſſible to have made ſuch Addition. But their own Idea of *Godefroi*'s Conſcience is enough to decide upon him, which is, that he might think

think he was doing no Fault in ſupplying the Blank with the Name of the Perſon to whom the Account truly related. According to this Idea, *Godefroi* might infer from the Book as it ſtood, that the Score related to Sir *John Stewart*; *i. e.* from the Book in a Condition to afford no ſuch Inference; and then might add the *Name* to ſave all further Difficulties about making his Inference probable.

Of a Piece with this Obſervation is another, that *Godefroi* would have been detected by ſhewing *Maillefer*'s Letter, if he had not ſworn true, as to the Perſon who recommended them: Whereas he has not ſworn to the Perſon who recommended him; and if he had ſworn falſe, would not have produced the Letters: So it is inſiſted, that if any Body elſe had remembered Lady *Jane* to be *pregnant*, that would have falſified *Godefroi*, who does not remember to have ſeen her *at all*.

But if their Witneſſes had the Purity of Saints, ſuch a Story could not find its Way to the Belief of one candid Enquirer: That they ſhould take Recommendations from the firſt Magiſtrate of *Rheims* to his Agent, and live at the ſaid Agent's Houſe from the 4th till the 14th; and be acquainted that ſuch a Correſpondent had ſent to enquire after him on the 13th: That he ſhould have all his Letters conſigned by a conſiderable Merchant at *Rheims*, M. *Andrieux*, to *Godefroi*'s Houſe, the whole Time he ſtaid away from *Rheims*, which muſt create a conſtant Intercourſe with *Godefroi*, though, what Wonder! is now forgot: That he ſhould return to the ſame Houſe again the 8th of *Auguſt*; and in fine, ſhould go back to the ſame Town of *Rheims*, giving out that Lady *Jane* had been delivered on the 10th; though he muſt expect to meet at Mr. *Maillfer*'s with *Godefroi*'s own Letter, bearing that they were well at his Houſe on that Day: Not to mention that the Account of her Delivery on the 10th muſt have been at *Rheims* within a Week of *Godefroi*'s Letter, repreſenting them as very well; at *Rheims*, a ſmall provincial Town, where it appears as Fact, as might well be expected it would, that the foreign Lady's Delivery was talked of within three Weeks after ſhe left the Town.

They ſay, what they could not perſuade *Godefroi* to ſay, That he was never at *Rheims* in his Life; and which, if they could have perſuaded him to ſay, would have made nothing to the Purpoſe.

They ſay that Mr. *Maillefer* had no Notion of either Pregnancy or Delivery, only becauſe Mr. *Maillefer*, who remembers Nothing, has not ſaid ſo: But it was notoriouſly talked of in the little Town where he lived, at Coffee-Houſes and Card-Tables; and the univerſal Credit in which Lady *Jane* was there afterwards, could not have happened, if any Part of *Godefroi*'s Story were true.

They ſay, that going to *Michel*'s on the 18th or 19th, ſhe could not date her Delivery nearer than the 10th; and ſhe wanted to convey that the 9th Day was over. But they are not pleaſed to give even their Imagination why ſhe incurred ſuch an Embarraſſment.—Suppoſe the Theft of *Mignon*'s Child, which they firſt placed upon the 11th, transferred to the 18th, where they place it now, ſhe might have kept it many Days as well as one; a Diſcovery of it could not be their Dread: If that had been ſo, they would not have kept it ſo publicly, as they did a Fortnight together, in the *Rue Serpente*.

Laſtly, They inſiſt there muſt have been *ſomething* wrong at *Godefroi*'s, becauſe Sir *John Stewart* and Mrs. *Hewit* have ſhewn great Anxiety to conceal their being there. Sir *John*, they ſay, did not mention it in the Note he gave Mrs. *Napier* in the Year 1756; and, what they hold more remarkable, after he had by Miſtake mentioned the Street, he drew his Pen *ſlightly* thro' it again: And Mrs. *Hewit* ſays in the Service, that after ſtopping where the Stage uſually ſtops, they drove to an Inn, but does not mention the Name of *Godefroi*. And theſe they ſtate as the only Mention made by either of them of *Godefroi*'s Houſe, till they were examined after the Reduction.

As to the firſt, Mrs. *Napier*'s Queſtion was, "Where Lady *Jane* was brought to-bed?" In Anſwer to which, it is Concealment that he did not ſay *Godefroi*'s, where ſhe was *not* brought to-bed. The *Rue St. Martin* was certainly a Miſtake; and, as certainly, one he thought immaterial, or it would have been full as eaſy to take another Piece of Paper, and write the Account he was going to give, clear of it.

As to the ſecond, it is not at all likely that if Mrs. *Hewit* had conceived the Purpoſe of ſinking *Godefroi*'s Houſe altogether, ſhe would have ſpoke of the Inn at all; and that ſhe ſaid no more of it was owing to the obvious Reaſon, that ſhe did not then remember the Name.

If Sir *John* has never talked of *Godefroi*'s Houſe to any Body, he has done that which has happened to Thouſands of People, who, in ſpeaking of their Reſidence at *Bath*, or elſewhere, do not make the Names of the Lodging-houſes as Part of their Narrative; and it would rather tend to ſhew, that he ſtaid there but little While: But whether he has mentioned *Godefroi*'s Houſe often or ſeldom, can never be collected, as none of the Witneſſes who depoſed to more material Circumſtances, were aſked to this; and it would not eaſily enter into any Party's Head to foreſee ſuch an Argument, and provide againſt it, by an Examination on Purpoſe.

But

But in ſtating this as a Matter of Fact, it ſhould not have been forgot, that, when Sir *John* had Occaſion to talk of *Godefroi*'s, within a Fortnight after he left it, he told Mad. *Michel*, that he had been at the *Hotel de Chaalons* four Days; which not only diſproves the *Aſſertion* of their Argument, but refutes *Godefroi* altogether; for what he ſaid ſo ſoon after the Thing happened, may ſurely be ſet againſt what Mr. *Godefroi* ſays ſo many Years after, if his Story were in any one Reſpect beſides intitled to Belief. It ſhould not have been forgot alſo, that the Houſe which he was thus deſcribing, the *Hotel de Chaalons*, a great and noted Inn, was at the Diſtance of about a Furlong from *Michel*'s.

The Teſtimony of the *Godefrois* amounts to this, They dare not pretend to remember any *Perſon*, *Circumſtance*, or *Paſſage*, of *July* 1748, but a few *inſignificant Particulars* which relate to Sir *John Stewart*. Thoſe which they do pretend to remember are all manifeſtly *infuſed*, and ſome manifeſtly *miſapplied*. The whole Amount of their Memory, ſtated by the Purſuers, is, that ſuch Perſons were there in the Year 1748; but the only material Points, of *when they came*,, *how long they ſtaid*, and *when they departed*, is referred to their Books. The Books by themſelves prove nothing, being only a Parcel of unconnected Memoranda of current Score to help the Memory for the Time; but they are reared into Evidence. Thus the *Godefrois* ſay, they do in Fact contain every Gueſt, without Exception, who came into the Inn. They contain, however, but one Account on the 4th of *July* 1748. Sir *John* confeſſedly came in on that Day; therefore that Account is his; and, as it runs to the 14th, he ſtaid ſo long. That the Scores run to the 14th, is far enough from proved; but let that paſs. The Contents of the Scores, ſo far from applying to Sir *John*, repel any ſuch Application; the whole Streſs of the Evidence, therefore, lies on that fundamental Propoſition, that the Books contain every Gueſt without Exception. In *May* 1765, the *Godefrois* ſaid, that one of theſe Books contained all the Gueſts without Exception. It fell groſsly ſhort of the Number of Gueſts which notoriouſly reſorted to the Houſe; and, in *July* 1765, another ſuch Book, of the ſame Kind of Memoranda, was produced; and then they ſaid, that both together contained the Scores of every Gueſt without Exception. Both Books together turn out to be notoriouſly ſhort of the Number of Gueſts which actually reſorted to the Houſe, particularly at the Time in Queſtion; and the Baſis of their Evidence now, is an Article of Memory, which is *admitted* to have been wrong in *May*, and is *proved* to have been ſo in *July*. This is literally the whole Evidence to eſtabliſh a Propoſition which is otherwiſe ſo improbable as to revolt Belief; and this improbable Inference, bottomed upon an Aſſertion convicted of Error, is all the Evidence whereupon Twenty-ſeven Perſons who have ſworn to the Pregnancy of Lady *Jane* are to be convicted of Perjury; and Three or Four or more, for the Purſuers have not even yet ſettled the Number, are to be convicted of the ſhameful and capital Offence of *ſuppoſing Children*.

PART IV. BOOK II.

Of the Taking away MIGNON's Child.

CHAP. I.

Obſervations on the Witneſſes, and the Manner of obtaining them.

THAT Mr. *Douglas* is the Son of *Nicolas Mignon* and *Mary Guerin* his Wife, and was baptized *Jacque Louis*. P. P. 233. A. — 224. I. — 190. F.

The Purſuers introduce this Part of their Caſe with an Apology for not proving it, and cite the Caſe of one *Piquet*, to prove that Mr. *Douglas* ſhould be ſent to the *Foundling Hoſpital*, becauſe they don't know whoſe Son he is, if not Lady *Jane*'s. Purſ. Mem. pt. 3. p. 220.

If it was their ſerious Perſuaſion that proving him to relate to another Family was totally unneceſſary, it would have been an Act of Chriſtian Charity to have ſaved ſo much Perjury as they have employed in attempting it.

Every Step of the Purſuers, in leading their poſitive Proof, is marked with ſo many Inſtances of foul Practice as never concurred, it is believed, on the trying any one Cauſe of Property before. Indeed this is not a Cauſe of Property to the Purſuers, who are ſpending their Zeal and their Money in this Purſuit; and, perhaps, the Difference between the Zeal of Rancour and the Zeal of Intereſt, may account for the ſhameful Peculiarities which diſgrace the Purſuit in this Cauſe.

When the looſe and uncertain Recollection of ſtale Memories is worked upon by the hardy Aſſertion and authoritative Publication of concerted Falſehood; when even the clearer and more preciſe Memory of little People, is daunted by confident Menaces of being confuted, and falſified; when the Imagination of bad People is led by a formed Story, calculated on Purpoſe to ſet their Evidence; when *baſe* People, guilty of one infamous Offence, reſort to Lies for the Sake of covering it, and at length are corrupted to advance further in Falſehood; when ſuch Practices are happy enough to light upon fit Subjects to work with, the Labour of ſeparating the *little* Truth from the much Falſehood, becomes immeaſurable.

But that Labour is doubled upon the Hands of a Defender, when the Charge againſt him is made up of the falſe Reports of Hearſays originally falſe, and of the falſer States of Evidence, which one Party wrote on Purpoſe to ſhew about, and eſtabliſh a popular Cry againſt the other; and yet even theſe laſt are cited by the Purſuers as Evidence. App. to P. P. p. 1097.

This Article of poſitive Proof was introduced into the Cauſe by the *Monitoire*, a Method which is preſerved in the criminal Juſtice of *France* for Reaſons of State; but the Abuſe it is obnoxious to is reſtrained by Laws made for that Purpoſe. The Purſuers being ſure of meeting no Party in *France* to challenge it, no Regard was had to the Ordonnances, nor any Meaſure ſet to the Abuſe. The *Monitoire* does not forbear, as the Ordonnances enjoin, to name or deſign the Perſons; it is not confined to ſuch Revelations as the Church could enforce or receive. It ſtates the Hiſtory of the Perſons accuſed, for three Years, from *Scotland*, in the Year 1746, to *London* in the Year 1749, and the two firſt Years in *Germany*, where the Authority of the Archbiſhop of *Paris* is not yet acknowledged. It gives a circumſtantial Detail of a ſuppoſed Impoſture, which the Authors knew to be falſe. It ſtates a double Abode from the 8th to the 14th of *July*, which was *given up* on the Detection of that Falſehood, and which they were *conſcious of* while they were writing it. It further ſtates, that on the 10th Lady *Jane* gave herſelf out as delivered of two Male Children, and that the Purſuers had poſitive Proof of the *ſucceſſive Suppoſition* of *both*, the firſt whereof is dated in *July*. It will be ſeen in the Sequel, how much of the Evidence takes its Bent from this very Repreſentation. D. P. 1009.

In the *Fauxbourg St Antoine*, the eaſtern Out-ſkirts of *Paris*, at the Sign of the *Mermaid*, a wretched *Cabaret*, even in that wretched Quarter of the Town, was the Neſt of five Families of Witneſſes which have been called forth to ſupport this Part of the Purſuers poſitive Proof. The reſt are much of the ſame Rank, and they are in all twenty-two.

Of all theſe Witneſſes, only three affect to have any Knowledge of the taking away the Child. Of *theſe* three, *Mignon* and his Wife are convicted of direct Perjury; and the third remembers little or Nothing of the Matter. The reſt of the Witneſſes do but repeat the Converſation of thoſe, who being reproached for their Baſeneſs in ſelling human Fleſh, invented Falſhoods to colour and excuſe it.

It may be proper in this Place to diſpoſe of one Article ſtrangely enough introduced into this Caſe; namely, Parts of Mr. *Andrew Stuart*'s Journal, ſupplied by a formed Memorial of Mr. *D'Anjou*. The Uſe which the Purſuers make of this in Argument, is no leſs than to reſtore per-
P. P. 597. jured Witneſſes, by ſtating what is ſaid to have paſſed between them and him, the Agent on the Part for which they are ſo perjured: There is no Need of Argument to ſhew, that no ſuch Uſe can be made of thoſe Papers, if they were intitled to the Credit of fair Repreſentations in other Reſpects.

But it is impoſſible to read *D'Anjou*'s Paper, which Mr. *Andrew Stuart* induſtriouſly ſubſtitutes in the Place of his own Journal from the 8th of *Auguſt* 1763, without obſerving that it was drawn up with the cloſeſt Attention and Care to digeſt, arrange, and colour the Story; and there are ſome pretty broad Falſhoods in it, if the Witneſſes gave him the ſame Account which they ſwore
—— 1099. H. to afterwards; particularly in that Article where the *Mignons* are repreſented as aſking the Gentleman's Addreſs, and *Guinette* as having ſpoken to Mad. *Mignon* and Mad. *Charlan* before either of them went. To publiſh this as Evidence in the Cauſe, and much more to rely upon it in Argument, is very ſingular; conſidering, that not even the Shadow of an Oath gives it any Countenance. It is at beſt but a Memorial, drawn up by one Party, to ſhew about and prejudice the public Opinion: It is not *known* whether it was ſhewn to any of the Witneſſes.

Thoſe very ſhort Extracts, of which Copies only have been produced, from what is ſaid to be Mr. *Andrew Stuart*'s Journal, could not be offered in Evidence, without manifeſting a Suſpicion that the Court, to which they were ſo offered, wanted Judgment to decide the plaineſt Points of Evidence: But addreſſed as they are to the People, not to the Court, they have ſtrong Marks of having been drawn for other Purpoſes than thoſe of meer private Memory and Inſpection.

As theſe perjured Witneſſes have been produced by the fraudulent Proceſs in *France*, it would be much for the Intereſt of Juſtice to trace, if it were poſſible, the Hiſtory of this Manufacture of Teſtimony. It is very difficult to drag ſuch Paſſages as theſe into Day-light, and quite impoſſible to trace, whether the Purſuers were acquainted with theſe People before their Revelation. Their Pariſh
D. P. 229. C. *Curé* ſays, it did not appear to him that they had ſeen any Body to induce the Revelation which was made, which might well happen, notwithſtanding they had ſeen the Purſuers before; neither is it poſſible to learn what they ſaid in Revelation, the *Curé* having refuſed to divulge it on his Examination: And Mr. *Andrew Stuart*'s Journal of Diſcoveries makes no mention, even of Notes, which a Journaliſt, who wanted to make his own Account uſeful to Himſelf, would naturally have made, immediately after hearing it read.

The Hiſtory of it muſt therefore be traced from ſuch ſmall Lights, as Accident has caſt up in the Cauſe, and from the moſt probable Inferences which can now be made upon them.

D. P. 228. D. P. P. 213. C. It appears that the *Monitoire* was publiſhed on three ſucceſſive *Sundays*, the 24th and 31ſt of *July*, and the 7th of *Auguſt*. *Baudouin* ſays, the *Mignons* went to Revelation on a *Thurſday*; but whether that was *Thurſday* the 28th of *July*, or 4th of *Auguſt*, is uncertain. *Baudouin*, who ſent to
D. P. 229. O. appriſe Madame *Mignon* of the *Monitoire*, thinks from his Memory, that the *Monitoire* was not affixed at all the Churches the firſt Time he ſaw it; but the *Curé*, who ſpoke of it to the Archbiſhop of *Paris*, on *Friday* the 5th of *Auguſt*, ſays, the Revelation was then recent; and deſcribes the ſecond Time of the *Mignons* coming in the general Terms of ſome Days after the firſt, which implies a ſhorter Interval. There was therefore a Period of four, if not eleven Days, between the *Monitoire*, which revived the Talk of *Mignon*'s Child, and her Revelation. Add to this, that
P. P. 196. G. *Guinette*, another active Inſtrument for the Purſuers, has depoſed that *Mignon* came from the *Curé* to ſend her, and that ſhe went there after: *Guinette* told *Kemper* that ſhe went to Revelation on the *Monday*, and ſwears herſelf that ſhe did ſo on *Tueſday*. It is probable, that it was in leſs than ten Days ſhe obeyed the Summons.

But whether the Purſuers ſaw her before Revelation, or not, it appears that they had Notice of it
—— 596. B. on *Friday* the 5th of *Auguſt*. Mr. *Dentremont* was at the Archbiſhop's in the Afternoon of that Day, and heard what the *Curé* had ſaid on the Subject. On *Saturday* the 6th of *Auguſt*, Mr. *An-*
D. P. 228. F. *drew Stuart* went to the *Curé* to learn the Names and Abodes of thoſe who had been in Revelation: The *Curé* doubted, Whether he ought to diſcover them; and ſaid, he would not adviſe any Body to ſee the Perſons on this Occaſion, till the Revelations had been tranſmitted to the *Procureur-General*, for Fear of weakening their Teſtimony. However, being convinced of the Intereſt which Mr. *Stuart* had in the Affair, i. e. being ſatisfied that he was really the Purſuer, he read over the Revelation to him, in which there was Mention made both of their Names and Place of Abode; though he can't ſay whether Mr. *Andrew Stuart* attended to them, or remembered them.—What did he ſuppoſe he was attending to, when he came on Purpoſe to aſk after them?

The *Curé*, however, to prevent all Inconveniencies, ſent the Revelation that very Day to the *Procureur-General*.

P. P. 598. E. On *Monday* the 8th of *Auguſt*, Mad. *Mignon* came again to the *Curé*, to deſcribe the Perſons, Figure, and Age, of the Perſons, who had taken away their Child. The

The *Curé* ſpeaks of exactly three Viſits from Madame *Mignon*; the firſt when ſhe came by herſelf to offer her Revelation; and he ſent her back to fetch her Huſband: The ſecond, when ſhe and her Huſband came together, and actually made her Revelation: And the third, when ſhe came to add the Deſcriptions of the Perſons. He ſays, that ſince her Revelation, Mad. *Mignon* told him, that ſhe had ſeen Mr. *Stuart*, but did not mention in what Place.---It is clear, that what he calls their Revelation, was that in which they had not deſcribed the Perſons; it was that he mentioned to the Archbiſhop; it was that he ſent on the 6th to the *Procureur-General*. It is clear alſo, that he knew nothing of her, but from her coming to reveal; and he has mentioned no more Viſits than three.---Madame *Mignon* ſtates the two firſt Viſits, and denies that ſhe had ever gone back to him ſince; "Pour ajouter ou changer aucune Choſe." Now her returning to the *Curé* would have been a very innocent Event, far from demanding the Aid of Perjury to conceal it, if there had been Nothing in the Occaſion of that ſecond Viſit which wore a different Complexion.

D. P. 228. B.

P. P. 231. C.
D. P. 231. E.

CHAP. II.

The Mignons *were induced by Promiſes and other Ways to believe themſelves Parties in the Suit; and perjured themſelves in Support of what they believed their own Cauſe.*

IT appears alſo, that, from the Beginning, the *Mignons* took a very active eager Part in *Pleading*, as the Witneſſes call it, againſt the Defender, whom Madame *Mignon* claimed for her Son, and was buoyed up with rich Hopes from the Event of the Cauſe, which ſhe called *Her Affair*.

—— 230. E.

It was as early as about the Time of the *Monitoire*, that ſhe began to diſtribute their Pamphlets. She promiſed *Lorette* to ſend him one.

On another Day ſhe brought the Pamphlet, and talked, as that Party did at the Time, that they had taken her Picture to confront Mr. *Douglas* in *England*; and that he went away for Fear ſhe ſhould know him to be her Son, which ſhewed how much he was in the Wrong; and told him, that her Gentleman, as ſhe called *Andrew Stuart*, had promiſed to do Good to her and her Huſband for the reſt of their Lives; and that he would get her Sons made Watchmen, whereby they might ſet up their Trade of Vintners without Fees; and the youngeſt was to be Apprentice to an Ivory-Turner.

—— 231. E.

She appeared in great Agitation upon the Occaſion; wiſhed the Thing over; and ſaid, ſhe ſhould tremble to appear before the Judges: Upon which *Lorette* told her, if ſhe had Nothing to reproach herſelf with, ſhe had Nothing to fear.

She lived in ſome Familiarity with one *Hubert*, who keeps a little *Cabaret* in her Street, the Sign of the St. *Hubert*; and in that Houſe ſhe was frequently heard to talk of theſe Promiſes which had been made her, and that her Son, at the Thirteen Cantons, would have a Stock of Wine given him; and when *her Affair*, as ſhe called this Proceſs, was over, Things would go well with her, and ſhe ſhould live there no longer.

D. P. 250. E.
—— 253. E.
—— 256. E.
—— 258. B.

She told *Lorette* alſo, that Mr. *Stuart's* Secretary had lent her Son *Eugene* 30 Livres; and in this ſhe is confirmed by *Eugene*, who proves, that M. *d'Anjou* had advanced that Sum to *Eugene* upon his Note. She told him, alſo, that Mr. *D'Anjou* was to procure her Son a Loan of 2000 Livres, in which ſhe is alſo confirmed by *Eugene*, whom this Purſuers examined, and who proved that M. *d'Anjou* ordered him to get two Securities, and wrote Letters about it into the Country; after which, he ſaid to him, that as he was Attorney in this Proceſs, it would be objected to him if he ſhould negotiate the Loan for him, and that he would recommend him to ſome other Sollicitor, who would do his Buſineſs. M. *Lorette* gave *Eugene* a Certificate of Character, on the Occaſion of this Loan, which Madame *Mignon* put into the Hands of Mr. *Andrew Stuart*.

—— 232. D.

P. P. 239. G.

Their conſtant Way of talking of this Proceſs was conſidering it as their own Affair, and as the Subject of great Expectation of the Good which was to happen to them from it. They were eager to diſperſe the Purſuers Pamphlets, as appears from their lending various Copies of them to ſeveral Perſons, on the 30th of *September*, in her Son's *Cabaret* in *Faubourg Montmartre*, which muſt have come from the Purſuers themſelves. In Truth, Mr. *Stuart's* Clerk had given her ſome, and ſhe had a great many to diſpoſe of; for if ſhe had known the Company ſooner, ſhe promiſed they ſhould all have had of them. When ſhe was examined on the Subjects of having ſpoken of ſuch Promiſes, and diſperſed the Pamphlets, ſhe ſaw her Conduct would depreciate her Teſtimony, and ſhe flatly denied it. After which, ſhe went to Madame *Papſelle*, and begged ſhe would not ſpeak of it to any Body; and to *Lorette* ſhe ſaid, that ſhe heard he was upon the Liſt to be examined, and begged he would not ſay ſhe had furniſhed him with ſuch Pamphlets, becauſe ſhe had denied it upon Oath, and would therefore paſs for a Liar. This was a Precaution in which thoſe who gave ſuch Information about the Liſt of Witneſſes, had their Share.

D. P. 237. B.
—— 238. E.
—— 240. D.

P. P. 231. F.
D. P. 240. D.
—— 249. C.
—— 232. F.

Many other Articles have been picked up in her Converſation which, at the ſame Time that they ſhew her Keenneſs in the Purſuit, rather refer to the Quarter from which they originally ſprung.

D. P. 662. B. Mr. *Douglas*, ſhe ſaid, was in Mourning for his Father; but ſhe would ſtrip him of it. It was an obvious Remark made by thoſe who heard her talk ſo violently, that if ſhe were really the Mother, it was ſtrange ſhe ſhould take ſo much Pains to ſtrip her own Child of his good Fortune. To which

P. P. 749. G. ſhe anſwered, " He had Fingers, and could ſcramble as well as his Brothers."

It is not very conceivable how any Woman, who really thought herſelf a Mother, could take ſo eager a Part againſt her own Child, unleſs the Proſpect of ſome conſiderable Good had been held out to her. But if any Truth could have been drawn from her after ſhe was once embarked, there is Reaſon to think that ſhe knew Mr. *Douglas* was not her Son, nay, that ſhe had by ſome Means heard of the Death of that Son which ſhe ſold. For before the *Monitoire* was publiſhed, or either

D. P. 665. C. Side had any Thing to do with her, ſhe uſed to bewail that the Child ſhe had loſt was dead, or elſe

—— 665. C. ſhe would have been in a very different Situation; ſhe loſt her Fortune by loſing him. When ſhe

—— 670. B. was reminded of this after the Account ſhe had given to the contrary, ſhe was diſconcerted, and re-

—— 662. B. ferred it to the Death of a Nurſe-Child; but that was no Explanation, for it was the Child of a very poor Body, who owed her ten Livres ſtill for nurſing it.

P. P. 750. C. To prevent any Suſpicion, that her Evidence was made up in Concert with Mad. *Guinette*, ſhe

—— 709. B. ſwore that ſhe had not ſeen *Guinette*, relatively to this Affair, before *Guinette*'s Revelation: Whereas ſhe went from Revealing herſelf to tell *Guinette* the Story ſhe had revealed.---*Mignon* the Huſband, who talked of the Cauſe in the ſame Stile himſelf, and was preſent and concurring in the Con-

—— 750. H. verſations of his Wife, and who ran about diſperſing the Papers, and often talked by himſelf of the

—— 755. B. Good he expected, and the Promiſes which were made him to that Effect, joined alſo with his Wife in a peremptory Denial of the Whole; and confirmed her, in denying her Return to the *Curé*, to change or add to her Revelation; by which Means he involved himſelf in the ſame full Meaſure of Falſehood.

The Purſuers ſeem to think their Caſe not a Jot the worſe for the Detection of Perjury in their Witneſſes. They ſum up the Teſtimony of the *Mignons*, and rely upon it as firmly in Argument, as if they ſtood clear of all Reproach.---So far as the Story indicates Subornation, they look upon it as an Article which rather requires Explanation; and for that they refer to a Paper they call a Sequel. Here they ſuppreſs three-fourths of the Imputation, and give no Anſwer to the reſt, unleſs a fulſome Panegyrick upon Mr. *Stuart*'s Integrity, which every Part of the Caſe refutes, and no one Witneſs offers to ſupport, is to paſs for an Anſwer; unleſs it be an Anſwer to ſay *Mignon* was tied down before ſhe was corrupted, without ſhewing when ſhe was corrupted, or how ſhe was tied down; unleſs it be Argument, either fair or wiſe, to inſiſt, that a Man's detecting Perjury is as bad as the originally ſuborning; unleſs calling M. *Lorette* perjured, and *Hubert* a Suborner in the very Face of the Evidence which cleared them from the Obloquy of the Purſuers, be enough to ſet aſide five other Witneſſes; and except alſo that bright Eſſay in Argument with which they conclude their Apology.---Some of the Witneſſes have ſpoken of the Promiſes which *Mignon* ſaid had been made her, without naming the Perſon from whom ſhe received them; while others, ſpeaking of the ſelf-ſame Promiſes, have named Mr. *Andrew Stuart* as the Perſon who made them. Upon which the Purſuers infer, that the Promiſes were made by the Defender's Agents, whom ſhe ſhunned and deſcribed as her adverſe Party, and not by the Purſuers, whoſe Caſe ſhe had been made to think her own.

Of all the Wretches whom they have brought up to be Witneſſes, theſe *Mignons* ſeem to be the worſt; for beſides the Baſeneſs of the Thing they charge themſelves with, they, *i. e.* the Father and his two Sons, were driven out of the Glaſs Manufacture for Pilfering. The Purſuers, whoſe Caſe

D. P. 667. F. lies wholly on the Huſband's Character, and his Wife's, labour to ſhew that there was no Conviction. It is, however admitted, Things were miſſing. He and his Sons uſed to ſtay after the reſt of the Workmen; they were charged with one Voice; they were diſmiſſed, and the Pilfering ceaſed.---This is all that the Director can alledge to juſtify his Diſcharge.

P. P. 748. H. 1. The *Mignons* ſwear in round Terms, that the Reaſon of their quitting the Glaſs Manufacture was becauſe the Wages were leſſened.

Mary Guinette, who is brought only to prove the Hearſay of the Lies which theſe baſe People invented, to ſereen themſelves from Reproach and Puniſhment, was engaged, by ſome Means or other, to take a no leſs active Part than the *Mignons*. She ran about to beat up for Witneſſes; ſhe told the Story with Eagerneſs to ſerve the Purſuers Purpoſes; ſhe prepared the People they went to, for their Reception; ſo that at *Charlan*'s, where ſhe met them, the People about pointed them to

—— 708. H. the Houſe " *par Acclamation.*" She was aware how diſcrediting ſuch Forwardneſs muſt appear, and ſwore, believe her who may, that it was not by Appointment; and yet ſhe thought herſelf a Creditor on Mr. *Stuart*, who pleads, believe him who may, in that Memorial which he affects to call a Journal, that he gave her Nothing.

It would be endleſs to tranſcribe all thoſe little Artifices, which the Evidence is full of, uſed to prejudice and engage the Tempers of Witneſſes againſt Truth, by thoſe who, while they pretend to have gone in Search of Nothing elſe, have employed, as far as their Conduct is in Evidence, only thoſe Means which the loweſt Practiſer in this Part of *Great Britain*, would hide his Head and be aſhamed of.

CHAP. III.

The Mignons *ſold their Child, and were therefore under the Neceſſity of inventing Falſehoods, at the Time of the Enlevement, to cover their original Crime.*

BUT the Prejudice and Falſehood, infuſed upon Occaſion of this Proceſs, is nothing near the Whole of what the Caſe labours under.---The Caſe was, that *Mignon* and his Wife ſold their Child by the Intervention of *Guinette*, an old Biſcuit Woman, and ſome Participation of *Edouard*, who ſold old Books on a Stall. The Crime was puniſhable by Law, as well as ſhameful in common Opinion. The firſt Thing to be done was to invent a Lie to colour the Parting with the Child. Their Story gained no Credit in the Neighbourhood, and old *Guinette*'s Defence was, not that they had been cheated, but that ſhe had waſhed her Hands of it.---If they had joined in the ſame Story, they would have been intitled to no Credit; and the only Conſequence of their varying in their Defence has been pointing out the Falſehood of both, in more glaring Particulars. P. P. 706. F.

That the Child was in Fact ſold out and out, glares through all the Falſehood which, from the firſt, they endeavoured to throw over it.

Old *Guinette* firſt applied to one *Charlan* for her Child, who carried him to the Gentleman at *Nôtre Dame* to be viewed, and he gave her three Livres for her Trouble, and ſeems to have appointed her when to come again; but having underſtood from *Guinette* that the Child was to be given quite away, and ſhe never to ſee it again, when ſhe came Home her Mother perſuaded her not to give her Child; and this is confirmed by what follows, that *Charlan* in chiding her Child, uſed to ſay, ſhe wiſhed ſhe had given him to the Gentleman when he deſired him, for it would have made his Fortune, and diſincumbered her Family of him. It appears alſo, that *Charlan* told the ſame Story to the Purſuers; upon which *Guinette*, who was by that Time become a Purſuer, offered to correct her, and ſaid, her Mother told her, ſhe would have given her Child, if it had ſuited the Gentleman: But what Credit *Guinette* deſerves againſt the three former Witneſſes, may be collected from her contradictory Ways of telling this Story. She ſaid at firſt that the Gentleman's Reaſon for refuſing the Child was becauſe he had not blue Eyes; but it turned out that *Charlan*'s Child had blue Eyes. Then her Reaſon upon her Examination was, becauſe he was too old: This was no leſs repugnant to what ſhe had ſaid before; for Mr. *D'Anjou* himſelf, in his Memorial drawn up at the Time, repreſents that ſhe ſaid, *Charlan* refuſed to give her Child; and in Support of this, refers to the Teſtimony of *Charlan* herſelf. —— 706. B. —— 703. B. —— 703. C. —— 708. H. —— 705. B. —— 706. A. —— 1003. I.

The Converſation which is ſuppoſed to have paſſed between *Guinette*, the Woman *Mignon*, and her Huſband, ſufficiently proves that it was underſtood between them the Child was to be given quite away. *Guinette* recommended it as a Thing which would make her Child's Fortune, and perhaps her's too: This muſt mean changing his State. She was perſuaded to propoſe it to her Huſband; who ſaid, that if it would deliver him from his Labour, which he thought too hard, and do the Child good, he would conſider of it. But the univerſal Opinion which prevailed at the Time, among thoſe who beſt knew the *Mignons*, is ſtronger Teſtimony than any ſmall Detail to be picked up, now at the End of twenty Years, and eſpecially under the Influence of ſuch a great Subject depending, what the real Conduct of theſe baſe People was. —— 742. C. —— 751. F.

Their Accounts of every Step in this Buſineſs are ſo various to different People, as from thence alone to prove the Falſhood: The Woman *Mignon* ſwears that ſhe went twice to *Nôtre Dame*; the Huſband and the reſt of the Witneſſes deſcribe her as going but once; and ſhe ſaid that the Perſons who took away her Child came three or four Times to her Houſe, promiſing her a Compenſation, and to take Care of the Child. —— 742. F. —— 751. H. —— 714. C.

It is pretended that *Bourgeois* forewarned her not to give up her Child, without knowing the Gentleman's Name; and *Mignon* aſſured her ſhe would take Care of that, and afterwards told *Bourgeois* that ſhe knew where her Child was carried. *Guinette* ſays, upon the Gentleman's declining to tell his Name, her Mother adviſed her againſt letting the Child go; and yet ſhe and the Huſband, in their Examination, deny that they aſked his Name: And ſhe dropt a pretty extraordinary Reaſon for it, becauſe ſhe expected to be deceived; which ſhe afterwards corrected: And yet they pretend that the Huſband carried a Diſguiſe along with him to run after the Coach in; according to which they muſt have given away the Child, under an Apprehenſion that it was to be carried quite off. With theſe Apprehenſions ſhe received three Guineas, and twelve Sols to her Boy, —— 715. I. —— 754. E. —— 747. G. —— 753. A.

P. P. 743. E. Boy, for the Child. Sometimes the Child was to be returned in eight Days; ſometimes in ſix Weeks; and the Gentleman was to pay them ſo much per Week if he kept it longer.

The Child was carried off in a Hackney Coach: The obvious Queſtion was, Why did you not take the Number? They were ſtunned with this Queſtion, and could only ſay they did not take it: Afterwards they did not know whether it was a Hackney Coach or another.

—— 744. F. Sometimes *Mignon* did follow the Coach; ſometimes he did not, becauſe he was too tired:
D. P. 654. E. Sometimes he actually knew the Houſe where the Gentleman lived who took the Child away,
—— 668. D. and had been at it; at another Time, ſhe had been to ſee the Child, eight Days after parting
—— 654. E. with him, but the People who took him were gone: At another Time, *Mignon* followed them into a Paſſage in *Mazarin* Street, and they ſhut the Door upon him; ſometimes he did not follow
P. P. 744. G. them into the Paſſage, but ſtopt at a *Cabaret* oppoſite to it, and afterwards diſcovered that it went
—— 707. D. into another Street, and ſo the Child was loſt: Sometimes this Thorough-fare was diſcovered the
—— 744. H. ſame Afternoon when he followed the Coach; ſometimes he and his Wife went and diſcovered it the next Day: Sometimes he and his Son went the third Day; ſometimes all three went:
—— 756. C. Sometimes he went up two Stories into two different Houſes, the Afternoon of the Day when the
—— 716. C. Child was taken away; at other Times, he only noted the Paſſage, and came the next Day, or, as he ſays on other Occaſions, the third Day, to purſue the Family which had taken his Child.

—— 745. C. Then ſhe had Maſſes ſaid in four or five Churches, which ſhe names; and that the firſt Maſs ſhe cauſed ſay, was at the St. *Eſprit*, before giving her Child, the Day on which ſhe gave him,
D. P. 719. A. to know what God would inſpire her to do: And this Maſs is found on the 10th of *March* 1749. The whole Family was employed four Months together in ſearching among the Midwives and all the *Hotel garnies* in the Quarter. Now there was an *Hotel garni* at the Diſtance of two ſhort Streets from that where the Coach is ſuppoſed to have ſtopped, and not half a Furlong from the *Parvis* of *Nôtre Dame*, where the Child is ſaid to have been taken: In that *Hotel* lodged a foreign
P. P. 850. E. Lady, with her Huſband, who had been lately brought to-bed of Twins; in another Houſe in
—— 879. B. the ſame Street one of her Children was nurſed in the moſt public Manner: It was *Michel*'s, in the *Rue Serpente*, near to which Nurſe *Favre* lived, and where Mr. *Douglas* was nurſed. If ſuch Enquiries were made, Lady *Jane* and her Child were heard of, and, probably, ſeen. Sir *John Stewart* too, if he had been the Gentleman, went every Day to the *Caffé de Malthe* on the *Quai Pelletier*, which is ſtill nearer to the Church of *Nôtre Dame*, and which he muſt paſs hard by, in going from the *Rue Serpente* to the *Caffe de Malthe*. But if there was a Spark of Truth in this Story, their Application would have been to the Police, and that would have led them immediately to the Child, if he remained a Day in *Paris*; ſuppoſing it poſſible to imagine that he could exiſt a Day in *Paris*, and eſcape the Reſearches they pretend to have made. Either, therefore, they made no ſuch Reſearches, and then all Idea of Truth vaniſhes; or, they did make them, and then the Story is thereby totally removed from Sir *John Stewart*: For no Man who meant to ſtay a Day in *Paris*, and ſtill more, in the ſame Quarter of *Paris* where he got the Child, would have apprized them of Circumſtances which muſt lead directly to Detection. And the Purſuers now ſay, he gave in his real Name, in his own Hand-Writing, to be inſerted in the Regiſters of Police, almoſt the very Hour he is pretended to have committed this Crime. If he had acted thus, Detection muſt have been the immediate Conſequence; which Circumſtance alone, as againſt ſuch a Story as this, ſeems ſufficient to prove that he was not the Man who had taken the Child, nor Mr. *Douglas* the Child taken. But it ſhall be ſhewn preſently that every Article in their Deſcription, even with the Helps they have had, inſtead of applying to him, Lady *Jane*, and Mr. *Douglas*, carry Suſpicion quite on one Side of him.

—— 745. D. There is not one Article, in her own Story, which does not make directly againſt the Truth of
—— 714. it, except the Story of her ſuckling *Flon*'s Child to preſerve her Milk; and that falls as naturally into the Idea of Fiction as of Truth. It was neceſſary, in Support of the Story ſhe gave out, to pretend to expect that ſhe ſhould have the Child again, and to endeavour to preſerve her Milk for it: She might, likewiſe, wiſh to do it, in Hopes of getting a Nurſe-Child. But the Sorrow ſhe is ſuppoſed to have affected for the Loſs of her Child; nay, the very Suſpicion that he was loſt at that
—— 706. F. Time, contradicts all the Story ſhe told on her Examination: For the Gentleman was to keep it ſix
—— 743. H. Weeks, and to ſhew it her in eight Days; ſo that till the Expiration of that time ſhe had no Reaſon to think it loſt; or at leaſt no other Reaſon than ſhe muſt have had before ſhe delivered it, to think ſhe was to ſee it no more.

It is clear therefore that they meant to give away their Child altogether; and that all their Accounts of themſelves, from thence forward, were but ſo many Lies to cover the Crime they had been guilty of: And out of the Depoſitions of theſe two perjured Witneſſes, and the Hear-ſays of their Falſehoods recollected, at the End of many Years, and the ſtale Memory of them pointed by the *Monitoire*, and particularized by warm and leading Converſations with the Agents of the Purſuers, the Story of ſtealing a Child is to be picked, and applied to ſupport ſuch deep Conſequences

as

as thoſe of convicting Sir *John Stewart*, Lady *Jane Douglas*, and Mrs. *Hewit*, of a ſhameful and capital Crime; convicting the many Witneſſes who have proved her Pregnancy, of Perjury; and ſtripping Mr. *Douglas* of his Name and civil Exiſtence.

Their Excuſe was, that they were tricked out of their Child. The Gentleman wanted to borrow the Child, not to buy him out and out. He wanted Twins to ſhew his Wife, juſt brought to-bed of Twins, who were both dead; and it was neceſſary to have them with blue Eyes, that they might correſpond with thoſe ſhe had loſt: And which is very remarkable, the Gentleman told her what he meant to ſay to his Wife, namely, That though the other Child was too weak to be brought to her, that this ought to be kept in the Houſe, becauſe the other was ſo weakly, that it was neceſſary to take Care of this.—Now it is abſolutely impoſſible that any Body alive ſhould think of telling a Lying-in Woman that one of her Children ſhould be taken Care of becauſe he was ſtrong, and the other not, becauſe he was weak.—She had read in the *Monitoire*, that the weakeſt of Lady *Jane*'s Children had been ſent into the Country for freſh Air; and her Way of weaving in that Story was to ſuppoſe, that the Reaſon of keeping the ſtrong Child with them was, becauſe he was worth Care, and of ſending the weak one out was, becauſe he was not. P. P. 705. H. —— 743. G.

CHAP. IV.

The original Account by the Mignons, *of the Manner of loſing their Child, totally different from that invented ſince the* Monitoire.

HOW to diſtinguiſh the Fragments of Truth at the Bottom of a Story, which has undergone ſo much Perverſion, from the firſt Lies to the laſt Perjuries, ſurpaſſes common Induſtry and Diſcernment.

It ſeems difficult to deny, that ſome unknown Gentleman did, at ſome Time, employ old *Guinette* to procure him a Child, with blue Eyes, as all the Witneſſes go to that: But at what Time, what Sort of Perſon, and how old the Child was, are Articles which there is very little Light upon.

That this ſame *Incognito* deſired a new-born Child, is an incidental Part of the original Pretence, that the Child was lent. It was neceſſary to give ſome Reaſon for deſiring it; and ſhewing it to a Lady juſt delivered, occurred as the moſt obvious: But to prevent Miſtakes, this was again prompted by the *Monitoire*: And this Part of the Story favours the more of Invention, becauſe *Mignon* told *Odeneau*, another of their Witneſſes, that the unknown Gentleman would not tell her for what Purpoſe he wanted the Child, which gave her much Trouble. *Odeneau* alſo ſays, that ſhe never knew for what Purpoſe the unknown Gentleman wanted a Child. —— 713. G.

That he deſired Twins is another Circumſtance which partakes of the Story told in the *Monitoire*, but is rather inconſiſtent with the Reſt of the Hiſtory, as the Witneſſes deliver it. Old *Guinette* applied firſt to *Charlan* for her Child; and it was but in Conſequence of being diſappointed there, that ſhe applied to *Mignon*; and upon obtaining *Mignon*'s Child, ſhe applied no further. —This proves ſufficiently, that one Child was the whole Compaſs of her Employment. Old *Edouard*, in whoſe Houſe the Dreſs was changed, and who is the only Witneſs to the Tranſaction unconvicted of Perjury, ſpeaks only of *one* Child being wanted; and *Odeneau*, *Flon*, and *Faillo* tell their Story of one Child only being aſked for: And Mr. *D'Anjou*, in that Memorial ſo often mentioned, betrays manifeſt Conſciouſneſs, that the Circumſtances reclaimed againſt the Idea of Twins being aſked for; for he takes the Trouble to miſrepreſent the Evidence. He ſays, that on Twins being aſked for, old *Guinette* propoſed it to two Women, as if there had been no Interval or Occurrence between; that both liſtened to it, and both were appointed to the Church of *Nôtre Dame*; that *Charlan* came there firſt (inſinuating it happened by mere Accident), and refuſed to part with her Child; that *Mignon* alſo came to the ſame Place, and did deliver her Child; ſtill conveying that one Appointment brought them both there; and that *Charlan*'s *Refuſal* was the only Reaſon of their not producing two at once. He leaves the Queſtion to ſhift for itſelf, Why, when they had got one, and found it impoſſible to have another, they choſe to give out Twins at all. When Mr. *D'Anjou* had once ſhaped his Plan of Evidence, he had to do with People who were enough prejudiced and engaged, by ſome Means or other, to propagate their Recollection of the Story in any Form he pleaſed; and this will account why, after ſuch a Length of Time, ſome of the Witneſſes on their Examination fancy, or ſay they fancy, to have heard the Story told ſo before: And why others, who yet muſt have been more in the Way of hearing the Story which was firſt given out, remember no ſuch Circumſtance. But the Evidence of the Thing itſelf, which is contrary, deſerves more Attention than the Witneſſes to the looſe Circumſtances of it, after ſo long Time, and under ſuch preſſing Influence. —— 706. A. —— 710. H. —— 711. H. —— 714. D. —— 704. G.

CHAP.

CHAP. V.

Of the Age of Mignon's *Child, when he was carried off.*

THAT a new-born Child was either required or obtained, may well be traced to the ſame Source; and is alſo oppoſed by the Evidence of the Thing itſelf.

It is now manifeſt, that the unknown Gentleman would have taken *Charlan*'s Child, who was five Weeks older than *Mignon*'s; and, if the Time were well eſtabliſhed by the Witneſſes, was juſt ſeven Weeks old when he was offered.—*Odoneau* ſays, that the Sort of Child aſked was a very
F. P. 712. H. blue-eyed Child, of three, four, or five Weeks old; and the whole Idea of New-born ſprings from the Nature of the Excuſe invented.

As to what Sort of Child the unknown Gentleman got, there are three Witneſſes, who had
D. P. 681. D. not the Honour to be of *Guinette*'s Acquaintance: They frequently ſaw *Mignon*, and the Child in
—— 682. F. her Arms, and ſpeak poſitively to his being three Months old before he was taken away.—The
—— 683. E. Maſs which ſhe ſpeaks of ſaying for him, the very Day ſhe gave him away, but which ſhe did not
—— 719. A. foreſee would come in Evidence againſt her, was on the 11th of *March* 1749; and *Odeneau* con-
F. P. 713. F. feſſes, that when ſhe heard the *Monitoire*, ſhe had no Thoughts of its relating to *Mignon*'s Child.

But they argue that it could not be ſo old, becauſe it was taken away before the Feaſt of St. *Clair*; Three of the Witneſſes have ſaid ſo, *Guinette* being one. Now, if this be their own Memory, which in a Cauſe ſo conducted may well be doubted, there is nothing ſo fallible in a Country where ſo many Feaſts are celebrated, as any particular Feaſt.---It is much more probable that it was the Feaſt of St. *Louis*, which being the King's Day as well as the Saint's, is more ſolemnly kept in Public; all King's Houſes and public Gardens being then thrown open, and all the Peo-
—— 762. E. ple, to the very loweſt, make Holiday. It will be ſeen hereafter, that even an Eccleſiaſtic, Abbé *O'Neil*, reckoning by a Feaſt, was miſtaken, though he ſhould be more likely to know the particular Holidays from his Office, than ſuch ignorant inattentive People: And the Time fixed by the other Witneſſes loſes much Credit by following the Lead of the *Monitoire* and *Guinette*.

At the Time of writing the *Monitoire*, the Purſuers whole Plan of Evidence was to prove, that
D. P. 762. the Child was too old to be born on the 10th of *July*; and therefore they ſtate, in that ſhameful Pub-
P. P. 746. E. lication, that he was ſix Weeks or two Months old; and *Mignon* follows the *Monitoire* ſo far as to ſwear that any Body would have thought him three Months.

When the Sale of *Mignon*'s Child was diſcovered, that Propoſition which had been ſo ſolemnly averred in Fraud of the Religion of the Country, was given up for falſe.---It will be remembered that
—— 887. D. their Plan, at this Time, was to prove, by Means of *Duruiſſeau*, that they came into *Michel*'s on the 8th of *July*, and got their Child, during their double Reſidence between *Michel*'s and *Godefroi*'s.---*Thurſday* the 11th was pitched upon as the Day, becauſe that was the Day when the
—— 751. H. Work was given up at the Manufactory; and *Mignon* ſaid, that he went earlier than ordinary to give up the Work, that he might attend his Wife.

Accordingly the *Mignons* ſay the Child was twelve or thirteen Days old, as he was born the 28th
—— 746. B. of *June*, and given away the 10th or 11th of *July*---*Flon*, twelve or fifteen Days old---*Guinette*,
—— 707. F. a Week or Fortnight before the Feaſt of St. *Clair*---*Baudouin* ſays, it was twelve or thirteen Days
—— 730. B. old, as ſhe heard from *Mignon*---*Faillo* thinks her Siſter *Charlan*'s Child was ſix Weeks old, which
—— 704. F. it was on the 4th of *July*---*Eſtampes*, two Months at the moſt, which in the Mean between her outſide
—— 702. H. Account and *Faillo*'s, brings it to about the 10th or 11th of *July*, the Time preſcribed by the *Monitoire*.

—— 712. G. *Odeneau* ſays, it was ſome Days before St. *Clair*: *Guinette*, a Week or a Fortnight: *Dumont*, be-
—— 718. G. fore the Feaſt of St. *Clair*, on the 10th or 11th of *July*, when the Child was ſixteen or ſeventeen
D. P. 683. E. Days old: *Jambon*, about the Feaſt of St. *Clair*; but ſhe adds, that the Child was two Months old.

When the Plan of fixing Sir *John* and his Family at *Michel*'s on the 8th was blown up by the Detection of the Perjury upon which it proceeded, and they had reſorted to a contradictory Idea, namely, that they had ſtaid at *Godefroi*'s till the 14th, it became neceſſary to poſtpone the Time of the taking *Mignon*'s Child, to make it accommodate. But unluckily their Witneſſes had all been examined, or elſe, with ſuch Witneſſes, there would have been nothing ſo eaſy.

The only Circumſtance in the Evidence they could lay hold on, without imputing Perjury to their Witneſſes, was the Reference made by ſome of them to St. *Clair*'s Day. It falls ordinarily
[illegible] 34. F. upon the 18th of *July* annually; but they produced, after *Duruiſſeau* had failed them, one *Mortier* to prove, that it was in Fact celebrated on *Monday* the 22d of *July* 1748: And they argue, that the Child was taken upon *Thurſday* the 18th, on the Authority, as they ſay, of ſeveral Witneſſes, who mark it by St. *Clair*'s Day.

The

The ſeveral Witneſſes are four, out of whom *Guinette* ſays it was a Week or a Fortnight before St. *Clair*, which ſtill keeps it back to *Thurſday* the 11th. *Jambon*, the ſecond, only ſays about St. *Clair*; but ſhe is ſure the Child was between two and three Months old. *Dumont*, the third, mentions St. *Clair*; but is withal poſitive to the 10th or 11th. *Odeneau*, the fourth Witneſs, alſo refers to St. *Clair*'s Day: But *Odeneau* ſays the Child was five or ſix Weeks old. So that two of the Witneſſes who mention St. *Clair* are given up, becauſe they have ſtrained too cloſe after the *Monitoire*, which was written upon a Plan now abandoned; and the other two ſpeak to a Circumſtance leſs fallible, the Age of the Child, which places it long after St. *Clair*.——The Feaſts kept in *France* by all the labouring People are too numerous to make them certain Epochs.

Therefore the parole Evidence will fix it juſt where it did upon their firſt Plan. The beſt and cleareſt Part of it carries the Event forward to *September*. Thoſe who inſiſt upon an earlier Date abſolutely confine it to *Thurſday* the 11th of *July*: And, which-ever Set of Witneſſes gain Credit, the Event muſt have happened too ſoon, or too late, to ſuffer an Application to Sir *John Stewart*: And the Entry in the Records of the Church of *St. Eſprit* fixes it to have happened in *March* 1749. And yet this is the Purſuers whole Argument, to ſhew that in Point of Time it may, not that it actually does, apply to Sir *John Stewart*.

CHAP. VI.

Of the Perſons who carried off Mignon's *Child.*

THE Purſuers next endeavour to ſhew, that the Perſons correſpond in Deſcription to Sir *John Stewart*; and they do not ſay whom elſe, the Lady being ſo totally unlike both Lady *Jane* and Mrs. *Hewit*, that it is not convenient to inſiſt upon either.

The Difficulty of recollecting Looks and Figures was ſo much encreaſed by the *Monitoire*, that they could not, at laſt, diſtinguiſh between a Man and a Woman.

Mignon told *Lorette*, that old *Guinette* introduced her to two Gentlemen at the *Parvis* of *Nôtre Dame*; and that thoſe two Gentlemen, without any Woman, took away the Child. She ſometimes ſaid ſhe had been impoſed on, becauſe they would not tell their Names and Abode: And at other Times ſhe ſaid ſhe never aſked their Names; becauſe if ſhe had, they would have deceived her. ——*Faillo* alſo ſpeaks of Gentlemen with whom her Siſter tranſacted. *Flon* heard the Report as of three Perſons; *D'Eſtampes*, *Odeneau*, *Bourgeois*, *Anne Kanper*, *Canivet* and his Wife, heard only of a Gentleman. D. P. 654. C. P. P. 704. G. D. P. 668. B. P. P. 704. G. —— 711. H.

The Height of the Gentleman was, as they pretend, exactly noted. It was a little taller than *Mignon*'s Huſband. *Mignon* ſays he was five Feet and an Inch or two. The Wife ſays, he was of a ſtrong Make, a white Face, a little tanned, in good Plight, and pretty full: The Huſband, that he was white-faced, a little tanned, fair Eye-brows, and blue Eyes, between fifty and ſixty Years old: *Odeneau*, that he was fat and ſtrong. His Dreſs *Mignon* deſcribes to be a maron-coloured Coat, quite plain; wearing a Wig, does not know whether in a Bag; a large plain Hat: The Huſband, a plain cinnamon-coloured Coat, large plain Hat. *Odeneau* ſpeaks of his Waiſtcoat being all Gold. —— 715. G. —— 726. H. —— 746. F. —— 753. G. —— 713. D. —— 713. D.

The Woman who was with him, ſays the Woman *Mignon*, was well dreſſed, about thirty-four or thirty-five Years, a little taller than herſelf, who was four Foot ten, below the middle Size, and well built, which ſhe explains *d'une bonne Corporance*, and of a full white Face. *Mignon* agrees with his Wife, that ſhe was thirty-five at moſt, of a white Complexion, in good Plight, pretty full, and near as tall as the Gentleman. There are but three Inches between the Height of *Mignon*'s Wife and the unknown Gentleman, therefore *almoſt as tall as the Gentleman* in *Mignon*'s Mouth, is pretty much the ſame as a little taller than herſelf in his Wife's. As to her Dreſs, her Hair was quite full of Powder, ſo as there was no Diſtinction of Colour. Her Head-Dreſs one ſwears was *French*, the other Foreign. *Bourgeois*, another of their Witneſſes, ſays ſhe was deſcribed to her as looking like a Chamber-maid. *Flon* ſays the Woman who came to *Mignon*'s Houſe two or three Times was well dreſſed, and looked like a Chamber-maid. —— 746. H. —— 753. H. —— 755. C. —— 748. I. —— 746. I. —— 753. I. —— 717. D. —— 714. C.

Now Sir *John Stewart* was of a clear Complexion, and was above five Feet ten Inches high; a Sort of Difference which makes the moſt ſtriking Part of any Man's Appearance. The Difference between ſome Inches above, and ſome Inches below, the ordinary Height of Men, whoſe Height happen to have been the Object of Attention and Memory, decides the Difference of the Perſon. —— 336. I.

And there cannot be a wider Difference imagined, than between Lady *Jane* or Mrs. *Hewit*, and the Woman they deſcribe: Her Age, Size, Plight, and Fullneſs of Body, was utterly the Reverſe of Lady *Jane*'s Habit: Her Fairneſs and Youth as far as poſſible from Mrs. *Hewit*.

Two People therefore below the common Height, and of the ſame Height with each other, cannot poſſibly be confounded with Sir *John* and Lady *Jane*, or Mrs. *Hewit*. All the People at *Michel*'s deſcribe Sir *John* as *beaucoup plus grand qu' aucune des deux Dames.*

After this it ſeems to be of little Conſequence whether they were Foreigners or not, ſeeing they muſt have been other than Sir *John* and Lady *Jane*.——But if any Man's Fate was to depend on the Truth of that Propoſition, Where is the Judge who would find them Foreigners on ſuch Evidence?

P. P. 708. —— 748. B. *Guinette*, as uſual, follows the *Monitoire*, and ſays her Mother told her that the Gentleman and Lady were Foreigners.—The Reaſon of this was, becauſe they ſpoke *French*, and another Language which ſhe did not underſtand.---*Mignon* ſays her Huſband told her they were *Engliſh* by their Jabber, as he had ſeen *Engliſhmen* in his Youth.——The Huſband, however, ſolemnly denies he would know *Engliſh* People by their Jabber; but that he would know them better by —— 754. G. —— 753. G. their blueiſh Cloaths, boot Sleeves and little Hats. The unknown Gentleman had a cinnamon-coloured Coat, and a large plain Hat. The young Lady, or Chamber-maid, was taken to be a Foreigner, not from what ſhe ſaid in *French*, but from her ſpeaking another Language. The —— 226. H. little ſhe did ſpeak in *French* did not betray to their Ears a foreign Accent; and the Phraſe ſhe uſes is idiomatically *French*, *Voila un beau petit Garçonnet. Garçonnet*, ſays *Richelet*, " *ne ſe dit* " *pas qu'en riant.*" Some of the Witneſſes heard of the Gentleman's ſpeaking *French* with great Difficulty, which, if it were a Foreigner, was in that Reſpect nothing like Sir *John*: Others, that he had a foreign Accent, but was intelligible enough. But ſurely it is much eaſier to conceive that a *Frenchman* would break his Language, and imitate a Foreigner, which any Body, with the leaſt Ear can do; than that one, really a Foreigner, ſhould hold the Sort of Converſation theſe People are ſuppoſed to have holden, by which they muſt inevitably have been diſcovered, if they ſhould dare to ſtay a Day longer in *Paris*.

CHAP. VII.

Mignon's *Child was totally unlike Mr.* Douglas *in Size, Strength, Complexion*, &c.

THE next Article of Correſpondence is the ſtriking Reſemblance between the Child, which *Mignon* ſold, and Mr. *Douglas*.

—— 881. E. *Favre*, who nurſed him a Fortnight and a Day or two, does not charge her Memory with the Colour of his Eyes or Hair. She only recollects that it grew down a good Way on his Forehead, and that Lady *Jane* uſed to put it back with a Piece of Linen; probably bound it back with a Fillet.---*Mangin*, who received him at *Dammartin* when he was a Month old, remarked, D. P. 596. C. —— 366. F. that his Hair was very brown. *Iſabel Walker* and Madame *Maillefer* and her Huſband deſcribe —— 603. B. him with large black Eyes, and brown Eyebrows and Complexion—And, by God's Mercy, ſo —— 607. A. he has continued ever ſince.——Before the Diſcovery of this *Enlevement* the Purſuers made great Uſe of the dark Colour of Mr. *Douglas*'s Eyes, Hair, and Complexion, as an Argument, that he was not the Brother of *Sholto*, whoſe Eyes were blue, and his Hair fair.

The *Mignons*, who parted with their Child as they ſay themſelves at a Fortnight old, as the P.P. 742. E. &c. Purſuers ſay three Weeks old, as People more credible than either as many Months, are pointed in their Deſcription of his blue Eyes, fair Complexion, fair Eye-brows and Hair. It is vainly ſaid by the Purſuers, that ſuch Articles might eſcape Obſervation, becauſe thoſe who took away that Child were curious about the blue Eyes, and fair Hair; and the Child was examined to that Effect. And if there be any Circumſtance which deſerves Credit in their Story, it muſt be that in which all their Witneſſes agree.

—— 1003. B. The Purſuers, to ſolve this Appearance, have examined ſeveral Witneſſes, to prove that the Colour of the Hair changes, and even that of the Eyes; and that it is not obvious to diſcern the Colour of the Eyes the firſt ſix Weeks. The Misfortune is, that the Witneſſes to both the Children ſpeak poſitively the other Way; and thoſe who ſpeak of *Mignon*'s Child were much called upon to obſerve it.

Do the Purſuers mean to prove the Correſpondence thus? Does this make a clear Proof, that a Child who was obſerved to have dark Eyes, Hair, and Complexion at a Month and ſix Weeks, muſt needs be the ſame Child who had blue Eyes, fair Hair and Complexion, at ſome Age which they and their Witneſſes cannot agree about?

It may be Matter of common Experience that the Hair changes, deepening in Colour, Shade after Shade, as they grow ſtronger; but it muſt be a Miracle to change them in ſo ſhort a Space of Time; and none of their Witneſſes ever ſaw or heard of ſuch an Inſtance: They all ſpeak of the Effect produced by a Courſe of Years: It is believed alſo, that the Eye-Laſhes are, from the firſt, of nearly the Colour which the Hair comes to after.

The

The Witneſſes have ſome of them ſworn, that the Eyes alſo change; but ſurely, the Inſtances of this muſt be rare, or it would be Matter of more ordinary Obſervation, and not confined to People of Science; but if ever it happens, it muſt be produced by ſome Length of Time, Growth, and gradual Change of Habit.

Warin, who ſays, that the Children of *Mignon* are fair *to a certain Age*, and then become brown, ſays nothing of their Eyes, and ſpeaks of an Accident, which is much more frequent in People of their Condition, than others with whom harder Fare, Work, and Dirt, help Nature to change the Colour at *a certain Age*.---But what has this to do with a Child the firſt three Months? D. P. 681. E.

The next Point of Reſemblance is the Age of the Child, and his Size. They had in their *Plaintes*, by which they led their Witneſſes in their firſt Examinations, ſtated him to be ſome Months old; ſo they averred in the *Monitoire*: And *Mignon* ſpeaks of her Child as robuſt, and round, and fat; ſo that any Body would have given him three Months: And all the Witneſſes agree in the robuſt and hearty Condition of that Child. P. P. 746. E. —— 719. A —— 713. C.

But their own Witneſſes examined as to the Age, and Make, of the Child which was nurſed at *Michel*'s, demonſtrate, that it could not be the ſame Child deſcribed by the *Mignons*, who might have paſſed for a Child three Months old. *Favre* ſays, *he might* be three Weeks or a Month old; that he was in ſo bad a Condition that one would not have taken him for eight Days old; but that he had not the red Colour which Children retain the firſt eight or ten Days; and that his Belly was not in Bandages, and that his Navel-String was off: And one other Witneſs, after being led through the *Tournelle* with ſuch pointed Averments as have been mentioned, advances as far as three Weeks, or a Month; adding, that his Skin was fair, as Children are at that Age, the red Colour, which laſts from four to eight Days, being gone. —— 881. C. —— 869. F.

If the Children's Ages, which in Fact differed but eleven or twelve Days, ſeem to approximate, recollected after ſo long an Interval, and under ſuch unfair Examination, the Condition they were in cannot be brought to any Degree of Reſemblance; for a Child ſo ſtrong and fat as *Mignon*'s, if abſolutely ſtarved for twenty-four Hours, might have died; but it would coſt much longer Time, and bad Nurſing, to bring it down to the State Nurſe *Favre* found the Defendant in; who gives no other Reaſon for ſuppoſing him more than eight Days old, but that the red Colour was gone off, and his Belly was not tied up in Bandages. Nurſe *Mangin* ſays, that when ſhe took him about the 8th or 9th of *Auguſt*, he was very little, and appeared to be about a Month old, which was his real Age. All the Witneſſes agree, that with Nurſe *Favre*'s Care and Milk, he recovered and throve; and yet *Mangin* thought him a little Child of a Month, with black Hair and Eyes, who ought to have been a large Child of ſix Weeks, with fair Hair and blue Eyes, to have anſwered their Deſcription. D. P. 596. C.

CHAP. VIII.

Of the Dreſs of Mr. Douglas *founded on by the Purſuers.*

ANother Point of extraordinary Reſemblance is found in their Dreſs. The Dreſs of Mr. *Douglas* is thus deſcribed by their Witneſſes. *Michel* finds Nothing in it to remark, but that the Linen upon its Head was like the Child of a *Bourgeois*. Her Teſtimony they drop, and refer to that of Nurſe *Favre*, to whom, being in a ſtill lower Situation, the Linen appeared very fine, and the Lace magnificent: She deſcribes it to be Edging of Muſlin, about an Inch broad *. Her Huſband, who was a Joiner, ſays, the Lace was about half an Inch broad; the Linen, however, appeared to him fine, and the Lace magnificent: But even to him the Cloaths did not appear magnificent, but middling. His Wife was not aſked to the Cloaths.---*Iſabel Walker* ſays, the Cloaths, which were made before going from *Rheims*, were ſuch as any Gentleman would provide on ſuch an Occaſion, not remarkably fine; they were of Cambrick, with a narrow Edging. P. P. 853. I. ——882. D.--I. D. P. 592. C. —— 591. F. —— 370. A.

The Dreſs which the unknown Gentleman brought for *Mignon*'s Child, as it was conſtantly deſcribed without Reference to Particulars, was magnificent indeed, fit for the *Dauphin*, and worth a thouſand Livres. It is impoſſible to collect a Reſemblance in the Dreſs from theſe Deſcriptions. If the laſt deſerve any Attention, they were moſt ſtrikingly unlike. P. P. 709. T. —— 713. D. —— 719. C.

The Purſuers have the Happineſs to be ſurpriſed with the Conformity between the Dreſs of Mr. *Douglas*, as obſerved by Nurſe *Favre*, and the Dreſs of the Child which *Mignon* ſold.

Mignon obſerved, that the Gentleman had brought Waiſtcoats of Linen, and alſo Dimity. He brought too Child's Cloaths, and Swaddling-Cloaths; but among theſe ſhe obſerved, that in

* This Paſſage, and the following, from Mad. *Favre*'s Oaths, are erroneouſly printed in the Purſuers Proof, both in *French* and in the Tranſlation; but is corrected in the Defender's Memorial, p. 459, 460.

Place of a quilted Swaddling-Cloth, he had brought one of double Linen, like a Pillow-Case, which she thought not sufficient to support his Reins; wherefore she put on her own Swaddling-Cloaths, and her own Roller, which was stronger than theirs, to support his Reins: And Mr. *D'Anjou* has improved the Child's Dress with the Addition of her *Beguin*.

By this Time *Mignon* has marked the Child sufficiently for her own: Her Swaddling-Cloth, whether it was made of Sackcloth, or other such suitable Material, it was such as *Bourgeois*, another Matron, who lived at the *Mermaid*, had lent her; it seems as if she had none of her own: Her Roller, as dirty and as ragged as possible to imagine; and her *Beguin*, or Cap, put amongst a Dress of a thousand Livres: A Dauphin's Cloaths would run no Hazard of being overlooked.

The Evidence of Mr. *Douglas*'s Dress, which applies to it, is an Observation made by Mad. *Favre*, one of their *Tournelle* Witnesses, that in Place of a Dimity Swaddling-Cloth, he had one of quilted Linen; and in Place of a Swanskin Swaddling-Cloth, he had one of common Flannel. Of the quilted Linen, she says no worse than that it was in Place of a Dimity; whereas, if *Mignon* had furnished any Swaddling-Cloth, or if hers had been of quilted Linen, Nurse *Favre* would have had many more Remarks to make upon it.

The Swaddling-Cloth of common Flannel, is supposed by the Pursuers to be the Part of Mr. *Douglas*'s Dress, which he borrowed from *Mignon*; but it happens that *Favre* found the Upper-Garment of Flannel; whereas the Swaddling-Cloth, whatever it was, which *Mignon* furnished, was put underneath, next the Shirt. This was called in the oral Pleading, "a dirty old Rag;" which it certainly would have been if *Mignon* had furnished it. But Nurse *Favre* does not call it so; on the contrary, she saw it was of Linen, which she and her Husband describes as fine: Nor does *Mignon* pretend that she furnished any such Thing; and if she had, it is too ridiculous to suppose they would have kept it an Hour after they had brought the Child Home. In alledging that *Mignon* furnished the Swaddling-Cloth of Flannel, the Pursuers seem to forget that they are searching after Nothing but Truth; for they happen to know from no less Authority than M. *Andrieux*, who was unhappily dead before he could be examined in this Cause, that this very Swaddling-Cloth of Flannel was made at *Rheims*, under Madame *Andrieux*'s Eyes: Besides that, they have misrepresented *Mignon*'s Words to alledge it at all; and if they had not, *Mignon* is convicted of Perjury.

Nurse *Favre* makes no Objection to the Roller, which her Nose would have objected to, if it had been there; nor to the Night-Cap, which was probably a Degree or two worse.

And after all, Nurse *Favre* seems to be misapprehended; for her Objection was rather to the Arrangement of the Dress, which was after the *English* Fashion, than to the Materials of it. In undressing a *French* Child, according to *Richelet*, she would have met with a Swanskin, then a Dimity, and then a quilted Linen; in the Place of which, according to the *English* Fashion, after opening the outside Coat or Robe, she first met with a Flannel Swaddling-Cloth, and then quilted Linen over the Waistcoats. This is a Solution of all the Surprise she expressed: But it does not signify a Rush whether the Surprise be solved or no, as it certainly turned upon a very different Subject than any Part of a Child's Dress furnished by *Mignon*.

P. P. 865. F. It seems to be forgotten also by the Pursuers, that *Blainville*, another of their Witnesses, undressed and dressed the Child before it was delivered to *Favre*; and if any such filthy Disproportion, as they now suppose, had been found in the Dress, she must have observed it.

Another Topic upon which they insist, is the Unlikeness of Mr. *Douglas* to Sir *John Stewart*, and his Likeness to the Woman *Mignon*, admitting his Unlikeness to the Man *Mignon*.

His Unlikeness to Sir *John Stewart* is proved by an Assertion of the Pursuers, that *it is believed* Sir *John*'s Eyes were blue; but of this there is no Evidence in Process. His Hair and Complexion were changed with Age; but his eldest Son has a very remarkable and striking Resemblance to Mr. *Douglas*, as several Witnesses in Process have sworn. D. P. 410. F. &c.

His Likeness to the Woman *Mignon* is asserted in a Memorial which is still less correct than the last; it is printed under the Name of "Mr. *Stewart*'s Journal." The several Persons are referred to, as capable of proving the Likeness; but those Persons have let the Memorial shift for itself, for no one of them has offered to prove any such Thing.

P. P. 748. H. D. P. 231. E. Instead thereof, they have endeavoured to keep up this Rumour another Way, by getting a Picture done of *Mignon*. What is become of that Picture, which they grew ashamed of in *France*, the Pursuers best know; but if it be preserved, and contains the least Point of Resemblance to Mr. *Douglas*, it belies the Original, (whose Face is scarce human) and is, to speak of it in the mildest Way, a very mean and injurious Insinuation of that which they dared not attempt to prove by Witnesses.

PART

PART IV. BOOK III.

Of the Taking away SANRY's Child.

CHAP. I.

General Remarks on this Case.

THE next Article of direct Proof attempted by the Purſuers is to eſtabliſh this Propoſition, That the Parents of the Defender and Mrs. *Hewit* ſtole away a Child from the Family of *Sanry*, in the Month of *November* 1749, and gave him the Name of *Sholto*.

The Plan of this Argument aims at no more than to eſtabliſh, to a certain Degree, a Coincidence of Time and Circumſtance, and to prove from thence, that Sir *John* could have ſtolen the Child if he *would:* That he *actually did*, is to be proved by a Sum in Arithmetic.

In the mean Time, that Sir *John would* have ſtolen a Child, in his then Circumſtances, exceeds the Power of Imagination to ſuppoſe. He had one Child, which if it was ſtolen, as the Purſuers ſuppoſe, he muſt have heartily wiſhed to be rid of. The Duke of *Douglas* had ſtript them even of Lady *Jane*'s ſmall Penſion, and left them involved in Debt, and almoſt without Reſource; Lord *Mark Kerr* had refuſed to lend her wherewithal to diſcharge their Debts at *Rheims*; they had even burnt their Laces for Neceſſaries; Lord *Morton*, the only Friend they could think of applying to, had lent them but juſt ſufficient to pay their Debts at *Rheims*, and come away: It was a hopeful Proſpect they went upon, to ſteal a ſuperfluous Child, beyond even what the Views imputed to them required; and they muſt have ſet about it with great Spirit and Alacrity.—This idle and improbable Story, which would not deſerve Belief if maintained by direct Evidence, ſtands upon no better Ground in the ſtrained Argument of the Purſuers, than this, *that it might be ſo.*—It might well be left upon their own Argument, giving them all the Facts and Dates which they aſſume, in Deſpite of the Evidence to the contrary, that it could not poſſibly be true: But the leaſt Attention to the Evidence is enough to ſhew, that it is abſolutely, and phyſically, impoſſible. P. P. 532. G. D. P. 60. D. P. P. 1066. D. D. P. 975.

It is not true, as the Purſuers alledge, that Sir *John Stewart*, Lady *Jane*, Mrs. *Hewit*, or *Sholto*, were at *Paris* when *Sanry*'s Child was ſtolen.

It is not true, that there is any Reſemblance between the three firſt, and the Perſons deſcribed as the Raviſhers; or between the laſt and the Child carried off.

CHAP. II.

Of the Time of Sir John's *Journey to* Paris *in* November 1749; *his Stay at* Paris *and Return.*

UPON the firſt Head, it will be neceſſary, 1ſt. to ſettle, as nearly as may be, the preciſe Time Sir *John Stewart* went and returned to *Paris*: 2d. The Time when the Child of *Sanry* was in Truth carried off.

That Part of Sir *John*'s Story, which they labour to bend and interweave in Point of Time, at leaſt, with the Period in which *Sanry*'s Child was ſubtiliſed, is ſhortly this.

In the Month of *July*, in the Year 1749, the Duke of *Douglas* was perſuaded, in the Manner which has been mentioned, to withdraw from Lady *Jane* that Penſion which he paid her in Lieu of her Portion.—The Event embarraſſed them beyond Meaſure: They were at that Time in Debt at *Rheims*, and had ſcantily found the Means of Subſiſtence. To continue there any longer was impoſſible; and to go away without ſome Relief was impoſſible: Lady *Jane* applied in vain to Lord *Mark Kerr* for a Sum of Money to clear her of the Place ſhe was in, and bring her home. P. P. 532.

Lord *Morton* had Compaſſion upon her Situation, and ſent her a Bill, drawn the 15th *October* 1749 by Meſſrs. *Coutts* of *Edinburgh*, upon *Waters* of *Paris*; and wrote to her at the ſame Time a Letter, which ſhe received ſome Time before the 29th of *October*, and adviſed her to come over to *England* directly. She, in her Letter, dated at *London* the 26th of *December*, appriſed Lord *Morton* of her having followed his friendly Advice, and come over without Loſs of Time. Lord *Morton*'s Bill was ſent to Mr. *Hay* of *Boulogne*;—Mr. *Hay* ſent it by the Poſt of the 28th P. P. 1067. L.

of

P. P. 240. A. of *October* to Sir *John* at *Rheims*; it was received on the laſt Day of *October*; and on the 1ſt of *November* Lady *Jane* and Sir *John* executed a Bond to Lord *Morton*, and on the 2d of *November* ſhe indorſed over the Bill to Mr. *Aubert*.

It has been already ſeen, that this Money was borrowed for the expreſs Purpoſe of bringing them home; and to That it was neceſſary to fetch the Child from *Paris*, and pay their Debts, and take leave of their Friends at *Rheims*, where they had been received for a Year and an Half with ſingular Eſteem and Kindneſs.

It is proved, and admitted, that they left *Rheims* and ſet out for *England* on *Saturday* the 29th of *November*. This appears from a Letter of Sir *John Stewart* of the 10th of *December* to Mad. *Andrieux*, in which he had particular Occaſion to ſpecify the Time of their leaving *Rheims*, to complain of a Carrier recommended by her, who had been eleven Days on the Road, and had alarmed them with the Fear of loſing their Baggage.

Theſe two Periods being fixed, will conſiderably help to aſcertain the Time when Sir *John*, Lady *Jane*, and Mrs. *Hewit*, ſet out from *Rheims* for *Paris* to fetch *Sholto*.

P. P. 258. H. — 257. D. Mrs. *Hewit* ſays, that juſt before they left *Rheims* to bring the ſecond Boy, Sir *John* received 350 *l.* from Lord *Morton*; and that it happened about the latter End of *October*. This Account the Purſuers have taken the Freedom with the Evidence to print in *Italicks*, as if it were a Falſehood to ſpeak of this 350 *l.* as received in the latter End of *October*.—The Aſſurance and Intimation of this Remittance was certainly received before the 29th of *October*; and to connect the Journey with that Date, which was in Fact connected with the real Receit of the Money in Caſh on the 2d *November*, was nothing extraordinary.

P. P. 244. D. — 250. D. Sir *John* can fix the Time no nearer by Dates, than ſome Time in the Year 1749; but he ſays, it was after getting the Money from Lord *Morton*: And their manifeſt Plan and Purpoſe connects the Journey with the Receit of that Money, and ſhows, that the Journey was made upon that Receit.——He ſays, that he returned from *Paris* early in *November*, and continued in *Rheims* ſeveral Days, but cannot recollect the Time preciſely.

D. P. 59. F. — 60. B. Mad. *Mayette* mentions the Journey to bring the ſecond Child: That Mr. and Mad. *Stewart* remained only a ſhort Time at *Rheims* after the Arrival of the ſecond Child, perhaps ſeven or eight Days, without remembering exactly:——That ſhe frequently lent them Money during their Reſidence in her Houſe; and that ſhe was not paid what ſhe had lent them, or her Rent, till their final Departure.

—— 148. C. — 149. G. Mad. *Mailleſer*, with whom they lived in great Intimacy, does not remember when the Journey to *Paris* was made, or how, but recollects the ſecond Child, and gives a very particular Deſcription of him; that he was fair, had blue Eyes, and a ſtriking Reſemblance to Lady *Jane*; and, according to her Recollection, they ſtaid but a little While at *Rheims* afterwards, perhaps it might be a Month or ſix Weeks:——That Mr. *Mailleſer* had lent Sir *John* ſome Money, which he was paid ſome Days before his Departure from *Rheims*.

P. P. 261. L. Another Witneſs, Abbé *O'Neil* ſaw the Child no leſs than three different Times after their Return. He lived at *Marais*, about two Miles out of *Rheims*; and he thinks the Time they ſtaid at *Rheims*, after their Return, was but five or ſix Days: But his Memory of Dates, there will be much Occaſion to ſee, is very imperfect, if not conſiderably warped by his Connection with the Purſuers.

Serv. 21. E. — P. P. 51. F. *Iſabel Walker* ſays, the Money received from Lord *Morton* was between three and four Hundred Pounds; but as ſhe does not ſeem to have been informed of that Tranſaction at the Time, it makes no Epoch for her.—She ſays, it was in the Beginning of *November* that they went to *Paris* to fetch *Sholto*: That ſhe cannot be poſitive as to the Time they were away, but thinks it did not exceed the Time they could perform the Journey to *Paris* and return with the Child *Sholto*: That the Family remained at *Roems but three or four Days*, as ſhe beſt remembers, but cannot be poſitive when they took Journey for *England*:—That the Family did not leave *Rheims* in a Hurry: That they paid their Bills, and put up their Baggage deliberately.

In aſſigning only three or four Days as the Period of their Stay at *Rheims*, between their Return from *Paris* and their final Departure, *Iſabel Walker* differs from all the other Witneſſes, and is inconſiſtent with the Idea which dwelt upon her own Mind of the deliberate Preparation for leaving *Rheims*, and with the Depoſitions of thoſe who remember ſeveral Viſits to have happened in that Period.

When a Witneſs, who appears to have ſo clear a Memory as *Iſabel Walker* has of all ſhe depoſes to, falls under Contradiction, it deſerves much Attention. On looking through her whole Account from the Beginning of *November* 1749 to *Chriſtmas*, it is manifeſt, that ſhe has fallen into the Miſtake of dropping eleven Days in ſome Part of it.

She

She remembers the Arrival at *London* on *Chriſtmas* Week, and their dining with Lord *Mark Kerr* on *Chriſtmas-Day*; and in this Circumſtance ſhe is alſo confirmed by Mrs. *Hewit*. They travelled ſlowly, ſhe ſays, from *Margate* to *London*, which would take up two Days, in the ſame Coach and Horſes; they ſtaid three Days at *Margate*; they were one Day on the Sea from *Dunkirk*, when a Storm forced them into *Margate*; they were fifteen Days at *Dunkirk*; they were one Day on the Journey from St. *Omer* to *Dunkirk*; they were ten Days at St. *Omer*; they were three or four Days in going to St. *Omer* from *Rheims*, which is proved by Letters writ at the Time, to have happened on the 29th of *November*.—Theſe Tranſactions thus deſcribed take thirty-ſix Days. Serv. p. 13. c.

From the 29th of *November* to *Chriſtmas-Day*, in the *French* Computation, is twenty-five Days; but when ſhe came to *England*, of Courſe ſhe followed the *Engliſh* Computation, which makes it exactly thirty-ſix.

She remembers their going to *Paris* in the Beginning of *November*; it appears before to have been on the 3d.——She remembers, that the Journey took up no more than ſeemed to her neceſſary for performing it, and bringing home the Child.——She knew, therefore, that the whole Journey muſt have been completed by the 13th of *November*. She did not know the Day of the Month on which they ſet out from *Rheims* for *England:* The Computation ariſing from her Account of the Journey, loſing thoſe eleven Days, would carry back the Time of their leaving *Rheims* to the 18th, inſtead of the 29th, and make their intermediate Stay four Days, inſtead of fifteen, which the other Witneſſes, and the Circumſtances which ſhe, as well as they, prove to have happened, demonſtrate was about the Length of the intermediate Stay: And this alſo agrees with their ſetting out for *Paris* on the 3d, and their Return on the 13th of *November*.

Nor is it wonderful, that ſhe ſhould not be accurate as to the exact Time of their Stay at *Rheims*, where ſhe had lived ſo long, and nothing new or ſtriking occurred to fix her Memory; or that ſhe ſhould be more accurate in the reſt of the Journey, where her Time was employed in a new and more ſtriking Way.

From this Evidence, notwithſtanding the Length of Time, and Death of ſeveral of their moſt intimate Acquaintances, it appears, that they went to *Paris* on the 2d or 3d of *November*, after receiving Lord *Morton*'s Money: and that after they came back, they ſtaid long enough in *Rheims*, not only to ſettle their Accounts and provide for their Departure, but to make and receive the Viſits of their Friends; which though an inconſiderable Time compared with the Whole of their Stay at *Rheims*, is fully ſufficient to prove, that they were returned to *Rheims* with *Shelto* on or before the 13th of *November*.

Sir *John* and Mrs. *Hewit* ſay, that they were three or four Days in going in a Chaiſe of Sir *Walter Rutledge*. The Horſes were, in Fact, it ſeems hired at *Marais*, Sir *Walter*'s Place, of one *Levermé*, who drove them himſelf; but unluckily he is dead: Sir *John* and Mrs. *Hewit* ſeem to recollect, that both were Sir *Walter*'s, which is a natural Miſtake, as they were obliged to him for the Chaiſe. When they came to *Villette*, an Inn where the Driver, who carried Wine to *Paris*, had been uſed to put up his Horſes, they left their Equipage there, intending to come back the next Day and ſet off to *Rheims* with the Child; and they took an Hackney-Coach to carry them to their Lodging in the Town. Where that Lodging was, Sir *John* has forgot, and Mrs. *Hewit*, who took to nothing *French*, never knew; ſhe underſtood it to be ſome Place which Sir *John* ordered them to be carried to: If any Thing is to be learned from the Converſation which is ſaid to have been holden by the Driver, it was an *Hotel garni* in the *Rue Coqueron*. P. P. 245. G. —— 266. C.

Travelling in an open Chaiſe ſo late in the Year gave Lady *Jane* a Cold and Head-ach, which confined her two or three Days.—In the mean Time *La Marre* was either ſent for, or fetched, by Sir *John*, to go with them to the Nurſe where the Child was. Sir *John* ſays, that he ſaw *La Marre* the firſt Thing he did; Mrs. *Hewit* does not remember ſeeing him till the third Day, when they ſet out to bring the Child Home: Both may be true, though it does not weigh a Feather whether either of them be exact in the Time. —— 245. K. —— 257. I. —— 258. D.

It is certain, however, that after having lodged three Nights in the *Hotel garni*, where they alighted, they paid their Lodging to the Servant; Mrs. *Hewit* thinks the Miſtreſs not being in the Way; and ſet off to take up the Child and carry him to the Place where their Chaiſe waited. —— 257. I.

Lady *Jane*'s Head-ach came on with the Jolting of the Coach, inſomuch that ſhe could not proceed, but was ſhown into a Houſe in their Way; whether an Inn or private Lodging Mrs. *Hewit* cannot be particular, but it was a good Houſe.——Here Lady *Jane* was obliged to go to-bed, and Mrs. *Hewit* attended her, while Sir *John* and *La Marre* proceeded to fetch the Child.

After

After ſome Hours, Sir *John*, *La Marre*, and the Nurſe, returned with the Child, who was dreſſed clean in a Calico Frock, the Dreſs in which he was carried to *Rheims*. They left *Paris* on the fourth entire Day, and were three or four Days on the Road back, by which Means their Journey took up ten or eleven Days.

The Purſuers are fond, at every Turn, of ſaying, without Proof, that their Tranſactions have been all along with the ſimple View of ſearching for Truth. After the Inſtances to the contrary, which this Cauſe affords, the Defender imagines few will take their Word for it. If this had been ſo, they would not have concealed what they have long known, that Sir *John Stewart* paid a ſmall Sum of Money to Mr. *Benoiſt*, at *Rheims*, on Account of Mr. *Hay*, Merchant in *Boulogne*, on the 14th of *November*; which Payment is entered in Mr. *Benoiſt*'s Books thus: In one, " 14 9bre, 1749, Reçu de Mr. *Jean Stewart* pour le Compte de Mr. *Theodore* " *Hay* de *Boulogn* vingt deux Livres dix Sols."---In another, " 9bre 14, Reçu par Monſ. *Stewart* " —22 Livres—10 Sols." And in a third, " 14 9bre 1749, Reçu de Mr. *Jean Stewart* pour " le Compte de Mr. *Theodore Hay* de *Boulogn* vingt deux Livres dix Sols."---Theſe Entries the Defender has only come to the Knowledge of within theſe very few Weeks, though he is aſſured the Purſuers were informed of them before the Proof in *France* was concluded.---However, the Want of this Piece of Evidence has done no Harm, as it is fully proved, independent of theſe Entries, that Sir *John* muſt have been back by the 13th of *November* at lateſt.

This Journey, while it ſtands thus dated, carries the Family quite out of the Reach of any poſſible Application of the *Enlevement* of *Sanry*'s Child to them, though the Purſuers have carried it near two Months backwarder than the Evidence does, to make it accommodate.

CHAP. III.

The Purſuers firſt Syſtem was, That Sir John *and Lady* Jane *arrived at* Paris *about the 18th of* November, *and took a double Abode, as pretended in* July 1748; *that they ſtaid nine Days at* Paris, *and returned about the Beginning of* December.

THE Purſuers Manner of applying the *Enlevement* to Sir *John Stewart* muſt, like all the reſt of their *French* Caſe, be traced through the Hiſtory of their obtaining their Evidence, to make it in any Manner intelligible; and this is ſtill more neceſſary to ſhew, in their proper Point, the Falſhoods of which their Witneſſes have been convicted.

From the Moment that the *Enlevement* of *Sanry*'s Child was diſcovered, all their Induſtry was employed in applying it to Sir *John*, and every Art uſed, that is, every one of thoſe fair Arts which occur ſo often in the Courſe of this Cauſe, and which ſerve to diſtinguiſh it from all other civil Proceſſes.---The cleareſt Story imaginable was given out, and had the good Luck to be ſupported by the cleareſt Evidence---a Piece of good Luck, which muſt attend any Story where ſuch Evidence as fills the Records of the Court of Seſſion in this Matter is admitted to apply.

They averred, in their *Plainte* of *June* 28th, and in their Condeſcendence before the Court of Seſſion, (one being a Plea in the *Tournelle*, and the other in the Court of Seſſion at one and the ſame Time) and in their *Monitoire*, which was affixed in all the publick Places in *Paris* by the 24th of *July*, That upon their Arrival at *Paris* they put up at a Lodging-Houſe of one *Renauld*, in the *Place St. Michael*, which is the further End of *Paris* from *Rheims* on the 19th of *November*, by their real Names of Colonel *Steuart*, a *Scottiſh* Man, and his Wife: That they ſtaid here but two Days, and then went to an Inn kept by the Widow *Selle*, the Sign of the *Croix de Fer*, *Rue St. Denis*, where, by a Repetition of very remarkable Circumſtances attending their firſt Journey, they went under the feigned Name of *Duverné*, *Gentilhomme de Korgue en Ireland*, *avec ſa Femme & ſa Soeur*: That they ſtaid in this laſt Place from *Friday* the 21ſt to *Saturday* the 29th: That they applied on *Sunday* the 23d to the *Curé* of St. *Laurent*, to be informed of ſome Family who would be glad to have a Child reared for them by a charitable Lady that Way diſpoſed; but not caring to diſcloſe the Name of ſuch Lady, the *Cure* refuſed to aſſiſt him with any Information: That the next Day, or at leaſt ſoon after, (for indeed the next, which was doubtleſs the Day, croſſes the reſt of their Story) he applied to the *Siſters of Charity*, who ſent him to a Woman called *Le Gris*: This Woman went to four ſeveral Houſes; in the laſt of which he found a Child to his Mind, after refuſing Girls and many other Childten: On the next Day he returned with a Lady, who alſo approved the Child, and bargained for it, giving the Parents eighteen Livres to buy Cloaths, and ſome Money for themſelves: That the next, or third Day, they took the Child home to the *Croix de Fer*: That the fourth Day the Parents grew uneaſy about having parted with him, and returned with a Reſolution to take him away; but finding him ſo well taken Care of, they ſtill left him: But on the fifth Day their

Cond. p. 13. K.

D. P. 1013. B.

Diſquietude

Diſquietude returned upon them, and they went, reſolved to have him: But on the Evening before, *i. e.* on *Saturday* Night, the Gentleman, his Wife, and Siſter, decamped at Midnight, pretending to go to St. *Germain en Laye*, but they went in Fact to *Rheims*; for the Boy of the Inn wondered they ſhould pretend to go to St. *Germain*, and take the Road of *Champaigne*.

This circumſtantial Story required for its Application to Sir *John*, that he ſhould have ſet out on the 15th or 16th from *Rheims*, *i. e.* three or four Days after Sir *John* was come back; and it required alſo that he ſhould return to *Rheims* about the 2d of *December*.

The Purſuers had the good Fortune to make conſiderable Intereſt with an *Iriſh* Abbé, one *O'Neil*, who then lived at Sir *Walter Rutledge*'s, in the Neighbourhood of *Rheims*; and as the Nature of the Proceſs they were carrying on with the Effects of their Pupil, and without Proſpect of Advantage to him, required they ſhould be great Œconomiſts, they uſed this Abbé both as a Witneſs and an Agent; and the Fruits of his Zeal for their Service were theſe:

He undertook to know very particularly Sir *John* and his Family; to have invited him to celebrate *Martinmas* with him; and that he excuſed himſelf on Account of preparing for his Journey, tho' it happens, as he ſwears, that the whole Preparation was made by himſelf; he lent the Chaiſe, and hired the Horſes: He adds, that it was about that Time they went away. He undertakes alſo to know that they were abſent about eighteen Days; and that they returned about the 2d Day of *December*; at leaſt, he ſaw them immediately after their Return on the Evening of that Day. He will not allow it poſſible to be miſtaken in this, becauſe it was the Feaſt of St. *Xavier*, which is highly celebrated by the *Jeſuits*, with whom he had dined that Day: And he knew alſo that it was five or ſix Days after this they ſet out for *England*. P. P. 259. L. —— 260. B. —— 261. F.

To make out the Number of Days eighteen, it was neceſſary to account for the Time beyond what ſuch a Journey would require; therefore he remembers alſo, that the Driver told him he had ſtaid nine Days at *Villette*. That he ſtaid at *Villette* Sir *John* had depoſed: The Time is ſupplied by the Abbé's Attention to his Syſtem; and the Driver added, that being uneaſy about it, he went in Search of him on the 6th or 7th Day; and that Sir *John* ſatisfied him, and told him the Day he meant to ſet off, as he accordingly did. —— 261. K.

The Purſuers went upon very good Grounds, in ſuppoſing that this Teſtimony of Abbé *O'Neil*'s would want Support; and they diſpatched him in Queſt of more Evidence. He, from a Motive of pure and diſintereſted Zeal to Juſtice, travelled near three Hundred Miles in Queſt of more Witneſſes. —— 262. K.

The Driver himſelf was dead, but his Place was ſupplied by one *Vuyet*, who was the Son of that *Vuyet* whom the Abbé ſeems to have called by Miſtake *Loyer*; and the Account he has been prevailed on to remember, as told him, he does not ſay by whom, is: That the Abbé hired his Father at *Marais*, in the Preſence of the Gentleman and Lady, at the Rate of ten Livres a Day: That the Day being fixed, he was to have driven them, and reckoned to have been back from *Amiens* Time enough; but the Gentleman chuſing to go ſooner by two Days than the Time he had fixed, at his Return he found that he went the very Day himſelf returned. From theſe Circumſtances he calculates, that he muſt have ſet out between the 10th and the 15th of *November*; that being the State of his Memory as to the Time. He returned from his firſt Journey to *Amiens*.---He made a ſecond Journey to *Amiens*, and upon his Return *met Levermé* at the *Garenne de Gueux* with the Chaiſe, and a Gentleman ſitting on the Box with *Levermé*, and three Women, whom he alſo undertakes to deſign; that one was the Lady, the ſecond a Lady's Companion, and the third a Nurſe with a Child: And this he ſuppoſes to be towards the End of *November*, but he cannot charge his Memory with the Time. He follows *O'Neil* in reporting the Converſation of *Levermé* about the Time he ſtaid at *Paris*. —— 265. G. —— 265. I.

This Witneſs has confounded the Story, in which he follows *O'Neil*. The Memory he affects of *meeting Levermé*, who muſt have been going to the ſame Place with himſelf and three Women, is plainly a purpoſed Falſhood blunderingly told: He contradicts *O'Neil* altogether in the Paſſage about his Father being hired; and, if any Reliance were to be had upon him, he confirms Sir *John*, Mrs. *Hewit*, *Iſabel Walker*, Mad. *Maillefer*, and Mad. *Mayette*, as to the Time of Sir *John*'s going; for by placing the Tranſaction between his Father and the Abbé antecedent to his firſt Journey to *Amiens*, he carries it to the latter End of *October* or Beginning of *November*: And the Abbé having repreſented his Application to *Vuyet*, and his engaging *Levermé* at the ſame Time, it would follow that both muſt have been at the ſame Time, correſponding to that on which Sir *John* really ſet out, the 2d or 3d of *November*.

Simoné is brought only to depoſe the Converſation of *Levermé*, much as *O'Neil* had done before. —— 268. E.

Thus ſtood the Proof; That they had ſet out ſome Time about the Middle of *November* from *Rheims*; had arrived at *Renaud*'s, in the *Rue Francbourgeois*, on or before *Wedneſday* the 19th; had gone to the *Croix de Fer* on or before *Friday* the 21ſt, keeping, as in 1748, the double

Demeure; had ſtaid there till *Saturday* the 29th of *November*; and had come back to *Rheims* on the 1ſt or 2d of *December*. It wanted nothing but another Abbé to ſwear that *Levermé* had complained he was knocked up at Midnight; to ſupply which, the *Monitoire* puts in the Alternative, that they had ſet out either in the Night or very early in the Morning; and the Condeſcendence, before the Court of Seſſion, changes it altogether to the Morning.

It was owing altogether to Accident, that ſuch as can think this a Species of Evidence fit to be attended to, have not convicted Sir *John* and Lady *Jane* of ſtealing a Child on *Saturday* the 29th
P. P. 241. F. of *November*; before which he had been at *Rheims* a Fortnight, and was actually one Day's Journey on the Road to St. *Omer's*.

CHAP. IV.

Col. Stewart *of* Ardſhiel *claimed one of the Lodgings: and the reſt of this Syſtem overturned by the Diſcovery of a Letter from Sir* John *to Mad.* Andrieux.

VERY luckily it was diſcovered that Col. *Stewart* of *Ardſhiel* and his Wife had been at *Paris*
D. P. 389. F. about that Time: The Colonel was dead, and his Wife could not remember the Name of the Houſe, the Landlord, nor of the Street. In ſhort, ſhe was as profligate as Sir *John Stewart* and Mrs. *Hewit*, the very ſame Myſteriouſneſs and Concealment, and there is nothing wanting but a Plot to charge her with. She remembers none of the Houſes in which her Huſband lodged; ſhe remitted him Money to *Paris*, and does not know which Way; and the only Way ſhe had of getting to her Houſe was by driving to that of one *Nunez*, in the *Rue de Foſſe le Prince*, where ſhe had directed her Huſband's Letters, from whence ſhe had been in Uſe to paſs and repaſs to her own Lodging: Alighting from the Coach there, ſhe found her Way to the Houſe of *Renaud*, in the *Rue Francbourgeois*. This double Abode is now given up by the Purſuers, who are content with expreſſing their Reſentments to the Witneſs by calling her bribed, becauſe the Defender's Agents had advanced her ſome Money, as a Loan, without which ſhe could neither have travelled from or to *Boulogne*, nor exiſted at *Paris*; and what is ſtill worſe, the Ducheſs of *Douglas* having hired a Veſſel to come to *England*, brought Mrs. *Stewart* over, without charging her, as ſhe ought, with her Share of the Expence.

This, and another accidental Diſcovery of Sir *John*'s Letter of the 10th of *December* abovementioned,
P. P. 241. E. which was produced after Abbé *O'Neil*'s Examination, altogether diſſipated the Whole of the Story: And the Defender was not more fortunate in the Diſcovery than in the Time of its Production; for if the Purſuers had called for a Production of Letters three Months before, none of their Witneſſes would have been catched in any of their Falſhoods, no more would have been heard of St. *Xavier*'s Day, or the eighteen Days Abſence; for other Dates and other Converſations of *Levermé* would have been in Proof, and it would have become more difficult to ſeparate Sir *John*, in Point of Time, from *Duverné*. That ſuch would have been the Caſe, is aſſerted ſo poſitively, not proceeding upon bare Probability, ſpringing from the Character and Tenor of *Andrew Stuart*'s Conduct in the Cauſe, but upon expreſs Evidence, that he did exactly the ſame Sort of Thing. The *Curé* of St. *Laurent* had been miſled by the Converſations of the Purſuers Agents, not like *O'Neil*, to take upon him the Knowledge of Falſhoods, but to make Conjectures upon Dates and
—— 273. E. Times againſt the Truth. A Letter of his own was traced, which ſerved to mark the Time
D. P. 270. B. exactly; and Mr. *Andrew Stuart*, who, unluckily for Juſtice, got Notice of the Diſcovery, went directly to apprize the *Curé* of it, that when he ſhould be examined on the Subject again, he might be able to fence the Concluſion. But, notwithſtanding every Practice of the Purſuers, as the Proof ſtands, there is nothing oppoſed to the Evidence of Sir *John*, Mrs. *Hewit*, *Iſabel Walker*, Meſdames *Maillefer* and *Mayette*, but the Teſtimony of two Witneſſes, *O'Neil* and *Vuyet*, who are refuted in every Article which they pretend to the Knowledge of: And their Falſhoods are further marked with the Intention to accommodate to the evil Purpoſes of the Purſuers. Upon this Part of the Caſe, therefore, the Weight of Evidence preponderates, deciſively to eſtabliſh, that they went from *Rheims* on the 2d or 3d of *November*, and returned on the 12th or 13th.

CHAP. V.

Time of the Enlevement.

THE Evidence of the *Enlevement* of *Sanry*'s Child has ſuffered various Diſtortions, to be applied to Sir *John Stewart*.

P. P. 590. K. The firſt Information they had of this Paſſage was from one *Recicourt*, their Agent at *Rheims*; who heard of an Event which was *nearly* at the Time they were anxious to get Information about: He heard it from Abbé *Poule*, who had heard it from the *Curé* of St *Laurent*.

The

The *Curé* of St. *Laurent* had no Knowledge of his own of the Month or Day, but, before his Examination, had been led by Converſation and Enquiries to make Conjectures about it. All he ſays of his own Knowledge is, that on ſome *Sunday* or Holiday, a Gentleman came to ſpeak with him, and told him that a Lady of Condition wiſhed to do Good to any poor Families who were burdened with Children, and begged a Liſt of poor Women in this Situation; but on his declining to mention the Name of the Lady, he refuſed to give him ſuch Liſt: He then enquired where the *Siſters of the Charity* lived, which he anſwered in a vague and indefinite Way. He heard no more of it till ſome Days after the Child was carried off; nor does he remember by whom he was informed of it; but imagines it was by the Siſter *Reiné* or her Companion; as they, or one of them, had told him before of the Gentleman's diſtributing Alms while he was with them: Whereupon he ſent for the Woman *Sanry*, to learn the Circumſtances from her; who told him, that ſhe had carried the Child to the *Croix de Fer*, *Rue St. Denis*, and left it there with a Gentleman and two Ladies: That ſhe went the next Day to take it back, but finding it well taken Care of, ſhe ſtill left it: That ſhe returned the Day following, and found that the Perſons to whom ſhe had given it were gone. It was ſaid they went to St. *Germain*, where *Sanry* went himſelf in Queſt of them; and not having found them there, he ran over ſeveral other Places in vain. The *Curé* informed the *Lieutenant de Police* of it by Letter, to which he thinks he received an Anſwer. P. P. 270. C.

In the Office of Police was found a Book, called a *Regiſtre de Renvoics*, beginning the 15th of *July* 1749, and ending the 22d of *January* 1750; and therein is the following Entry: "Letter from the *Curé* "of St. *Laurent*, upon the Subject of one *Duvernay*, who has carried off the Child of one *Sanry*, under "Pretence of placing him with a Lady of Condition, who would educate him. He has given a "falſe Addreſs," dated the 10th of *January* 1750. On the Column which contained the Date of the *Renvoi*, this Date of the 10th of *January* 1750, relates to the fourth, fifth, and Half of the ſixth Page, and the Entry is on the fifth Page. This Book was then kept by one *Hamecourt*, Secretary of the Cabinet to the *Lieutenant de Police*; and this Secretary wrote every Day in his Book, all Memoirs, Placets, and Letters, which were ſent to the *Lieutenant de Police*: And the Cuſtom is, every Day to make two Tranſmiſſions from the Cabinet of the Lieutenant to the ſeveral Offices; that in the Morning, of all Papers ſent after the preceding Afternoon; that in the Afternoon, of all ſent ſince the Morning. *Chaban* and *Huguenin* were then the firſt *Commis*, to whom the Tranſmiſſions were made. The firſt, ſecond, and greateſt Part of the third Page is ſigned *Chaban*; the reſt of the third Page *Huguenin*; and ſeeing the fourth, fifth, and Half the ſixth Pages are ſigned *Chaban*, it is the Opinion of M. *Hochet de la Terrier*, the preſent Secretary, that this Letter did not arrive till after the firſt Tranſmiſſion of the 10th of *January* had been made to the Office of *Chaban*. —— 273. E. D. P. 270. E.

The Uſage alſo is, that each of theſe firſt *Commis*, to whom ſuch Tranſmiſſions are made, diſtributes his Papers, ſo ſent, to different Secretaries of his Department; and accordingly, in the Office of M. *Laurent*, one of the Secretaries of M. *Chaban*'s Department, a Regiſter was kept, beginning the 20th *December* 1749, and ending the 29th of *October* 1750, in which is found of the ſame Date, the 10th of *January* 1750, an Entry of the Letter from the *Curé* of St. *Laurent*, againſt one *Duvernay*, who has ſtolen a Child: And it appears alſo from the ſame Book, that the Letter was put into the Hands of Mr. *Pouſot* to make Enquiries; who does not appear to have made any Reports upon it.— Thus it is proved in the moſt authentick Manner, that the *Curé*'s Letter was ſent on the Afternoon of *Saturday* the 10th of *January* 1750. P. P. 274. I.

As to the Time of the *Enlevement*, *Dumenil* ſays very poſitively, that it was late on a *Saturday* Night when the Child was carried away. He ſays he opened the Gate of the Inn to let them out at Midnight; his Wife ſays ſhe lighted them to their Coach betwixt eleven and twelve o'Clock; the Widow *Selle* ſays they went away early in the Morning before ſhe was out of Bed. —— 286. G. —— 285. G. —— 283. F.

Four Days were taken up in procuring and carrying the Child away. On the firſt, the Gentleman went round to the ſeveral Houſes to look at Children: On the ſecond, he came in the Afternoon, as the Woman *Sanry* ſays, and gave her Eighten Livres to dreſs the Child; as *Legris* ſays, he came in the Morning, and he and the Lady in the Afternoon, when they gave the Money; adding, as they repreſent, that he had a Houſe in St. *Germain*, where they might come and ſee their Child: On the third Day, they took the Child to the *Croix de Fer*: On the fourth they went with a Purpoſe to take him back; but finding him well taken Care of, they left him: On the fifth Day, which, according to *Dumenil*, was the *Sunday*, they returned with the ſame Purpoſe, and the Gentleman and his Women were gone. —— 275. D. —— 290. I. —— 291. C.

The *Curé*, and the *Sanrys* having been examined before the Letter of the 10th of *January* 1750, was diſcovered, were not led by any Queſtions to ſpeak preciſely of the Dates of their Application to the *Curé*, or of his to the *Lieutenant de Police*. All that he had ſaid about it was, that he had heard from the *Siſters of the Charity*, of the diſtributing of Alms before the *Enlevement*, and that they had alſo told him of the *Enlevement*; but at what Time preciſely, he does not ſay, only P. P. 270. F.

only that it was ſome Days after the Event of the Child's being carried off. The Woman *Sanry*
— 291. G. tells the Story of the Child being taken away; of the Addreſs to St. *Germain*; of her Huſband's going there on the Day after, which was the *Monday*; of his Diſappointment, and his ſetting out on the Journey, which the Witneſſes deſcribe to be of ſix or eight Months; and then proceeds to ſpeak of her Application to the *Curé*: Upon which ſhe ſays that the *Curé* ſent for her two or three Days after, which muſt, in the Nature of the Thing, mean two or three Days after the Event happened. For if it was after the Return, it would have been in the Summer 1750: Nor is this diſputed; for in the Purſuers Pleadings in *France*, the Huſband is ſtated to take the Journey, and the Wife to have ap-
Cond. p. 15. F. lied to the *Curé*. In their Condeſcendence to the Court of Seſſion, the Application is ſaid to have been made to the *Curé* ſoon after; and every Circumſtance ſpeaks, that it muſt have been while the Affair was freſh, and probably, as they ſtate it themſelves, in two, three, or four Days after it happened.---On the Diſcovery of the Letter, the *Curé* was examined again, from an Anxiety to fix his Memory more preciſely by the Date of that Letter; but unluckily for Juſtice, Mr. *Stuart* had Notice of the Diſcovery and Acceſs to the *Curé*, and went to apprize him of it, that he might ſhape his Anſwers accordingly. However, he could not change the Date of *Duverné*'s Application to him, nor could he much poſtpone his Application to the *Lieutenant de Police*. He was obliged to confeſs, that
D. P. 268. B. the Affair required Alertneſs and Diſpatch; and ſays, that he cannot, at this Diſtance of Time, ſpecify the Number of Days which intervened exactly; but it could not be more than three, four, or five Days, and perhaps leſs.

But though it was impoſſible for the *Curé* to change the Dates, after what he had ſworn before, that the *Siſters of the Charity* had converſed with him before the *Enlevement* concerning the Gentleman's diſtributing Alms; and that he heard of the *Enlevement* itſelf ſome Days after it happened, and ſent for the Woman *Sanry*, which the Woman herſelf confines to two or three Days; and after declaring, (as the Nature of the Thing ſhows) that it was a Matter requiring Diſpatch, and conſequently was not delayed: Though after this he could not alter the Time, the Purſuers contrived to draw from him a Conjecture delivered with expreſs Diffidence and Suſpicion of it,
— 269. F. That he had remarked in the Letter to the Police, that the Perſon who took away the Child had ſaid he was going to St. *Germain*, and from thence to *Rouen*; but that he was to be found in neither. This doubtful Conjecture of the *Curé*, they ſay, is ſupported by that Paſſage in the Entry, that he had given *a falſe Addreſs*; whereas the natural Inference is, that if he had given two falſe Addreſſes, both would have been expreſſed in the Directions to the Officers to make Search, and have been noted in the Record of ſuch Directions. But they further ſay, it has a wonderful Correſpondence
— 271. F. with the Story; for *James Goube* ſays, that they went ſtraight to *Rouen* from St. *Germain*.

That the only Addreſs the Gentleman gave was to St. *Germain*, if the Purſuers have proved any Thing in that Way, is eſtabliſhed beyond the Reach of Contradiction.

P. P. 283. B. The Woman *Dumenil*, and *Sanry* the Huſband, have ſworn to the Converſation of the Gentleman
— 294. H. at the Inn, who told the Mother that he had a Houſe at St. *Germain en Laye*, where they might come
— 276. I. and ſee the Child; and *Sanry* told *Le Gris*, that her Huſband was already gone there. This was upon the *Monday*, the Day after the Child was miſſed.

— 288. B. The Widow *Selle* ſays, that the Gentleman told them he dwelt in St. *Germain*, where they might find him at any Time. *Dumenil* ſays, that *Sanry* the Woman, told Mad. *Selle*, who reproached her for parting with her Child ſo, that the Gentleman had told her, he had a Houſe at St. *Germain*. And the Purſuers, in their Condeſcendence of Facts ſtate themſelves, that he pretended to reſide generally at St. *Germain en Laye*. After all this, which is ſaid to be univerſally underſtood at the Time, how can the *Curé* be near the Truth, in conjecturing that he repreſented the Gentleman as going to St. *Germain*, and from thence to *Rouen*, when the Pretence was, that he had a fixed Reſidence at St. *Germain*, where they might at any Time ſee their Child. Nor would ſuch a fooliſh Pretence have at all anſwered the Purpoſe: St. *Germain*, within eight Miles of *Paris*, was a Place where they might ſee him whenever they pleaſed; but *Rouen*, eighty Miles off, was juſt as convenient to them as *Conſtantinople*.

But it does not reſt here.---All the Evidence goes to prove, that the Father went alone to St. *Germain*: That he went on the *Monday*, the Day after the Child was miſſed; and that he re-
P. P. 286. G. turned that Night. *Dumenil* ſays, that on coming back the ſame Day, he told him he could find nothing; and *Selle*, that the Woman told her, her Huſband had been at St. *Germain*, to make Enquiries, and could diſcover neither the Child nor the Name of the Perſons. *Dumenil* the
— 284. B. Woman ſays, that they came back in the Evening of the ſame Day they went to St. *Germain*, and ſaid they could learn no Tidings of their Child.

— 286. I. *Dumenil*, the Huſband, ſays, that upon his coming back to the Inn with that Story that his Searches at St. *Germain* were in vain, he *Dumenil*, being a *Havre* Man, adviſed him to go there and to *Dieppe*, becauſe taking them to be *Engliſh* or *Iriſh*; (they had ſo writ themſelves in the *Livre de l'Inſpecteur*); and as they ſaid they were going to St. *Germain*, he imagined they would go on to

Havre

Havre or *Dieppe:* After which he never ſaw him till his Return from *Havre.—Lanue*, a Daughter of the Woman *Sanry*, ſays that he ſet off upon his Journey, which laſted five or ſix Months, a Week or a Fortnight after the Child was taken away, having borrowed Money in the mean Time.—*James Goube*, her Brother, who went with him, ſays likewiſe that it was a Week or a Fortnight after the Child was carried away. This Journey was in Fact a Circuit of Rope-dancing, the Trade of the Family, which laſted five, ſix, or, according to ſome, eight Months. —— 272. E.

The ſecond Journey which proceeded to *Havre* lay through St. *Germain* and *Rouen*; and *James Goube* ſays, that they went to St. *Germain*, as they did, and from thence to *Rouen*, as they did; and adds, contrary to all the Evidence, that the Gentleman had ſaid he had a Houſe at *Rouen*. D. P. 271. A.

Upon this the Purſuers ſay, notwithſtanding the contrary is proved, that it is probable he gave them an Addreſs to *Rouen*: and in the Teeth of every Witneſs, that *Sanry* continued the firſt Journey from St. *Germain* to *Rouen*: And from the Fact ſo ſtated they infer alſo, againſt every Witneſs, that the Child was not conſidered as loſt upon his not being found at St. *Germain*. And thus it is proved, that the *Curé* did not hear of it till ſix Weeks after the Time of his being taken away, though *Sanry* was ſent for to give him an Account in two or three Days, in Conſequence of his Converſation with the Siſters, who appear to have converſed with him frequently.

The Reſult of this Evidence is, that the Gentleman applied to the *Curé* on *Monday* the 29th of *December*. The *Curé* ſays it was on a *Sunday*, or Holiday.—*Monday* the 29th was the Feaſt of the *Holy Innocents*. That on *Tueſday* the 30th, or *Wedneſday* the 31ſt, the Purſuers ſuppoſe it to be the ſecond Day after this Application to the *Curé*, he applied to the *Siſters of the Charity*, and ſaw the Children: On *Thurſday* the 1ſt of *January*, he and the Lady came back, approved it, and gave Money to the Parents: On *Friday* the 2d, they took the Child to the *Croix de Fer*: On *Saturday* the 3d, they returned with the Purpoſe of taking him back, but were perſuaded to leave him: On *Sunday* the 4th, they returned to the Inn, and found he was carried away; and on that Day, or on *Monday* the 5th, went to St *Germain*. On *Tueſday* the 6th, being the 2d, or *Wedneſday* the 7th, the 3d after the *Enlevement*, the Woman *Sanry* went to the *Curé*; and on *Saturday* the 10th of *January* the *Curé* wrote to the Police.

This being the Reſult of the only certain Piece of Evidence, ſupported by ſuch concurrent Teſtimony as has been ſeen, remains uncontradicted by any other Part of the Proof, which is all too uncertain to build upon, if it ſtood alone, and much more when ſo oppoſed.

Thoſe who ſpeak of the Time, by ſuch Recollection as they can raiſe of the Seaſon, put it at the Vintage---the Autumn---the Winter; which Quarter begins on the 20th of *December*---a good long Time after the Fair of St. *Laurent*---ſix Weeks after it---two Months---before *Chriſtmas*---cold Weather---they had Fires---and ſo forth. P. P. 272. B. —— 290. E. —— 278. H. —— 286. F.

Thoſe who ſpeak from the Age of the Child, leave it in the ſame uncertain State: Twenty---twenty-one---twenty-two Months---from twenty to twenty-one---from twenty to twenty-two. The Mother gives him twenty Months. The Siſter, who was above twenty-one Years at his Birth, gives him twenty-one Months: The Father, from twenty to twenty-two. Twenty-two carries it as much too forward into the Year 1750, as twenty leaves it too late in the Year 1749. Following the Evidence above ſtated, he was twenty-one Months old, and was going ſome few Days in his next Month. —— 281. G. —— 290. E. D. P. 272. F. —— 293. K.

It may be Matter of Wonder to ſome, that they were no nearer to the exact Time required by the Purſuers, as it had been particularly pointed out in that Reproach to the Juſtice of a civilized Country, the *Monitoire*; and three of their Witneſſes are detected in Perjury, to accommodate with their Story, *Legris*, *Sanry*, and his Wife. Their *Curé* only conjectured his Falſhoods; and, to deal candidly, this Wonder is ſtill encreaſed, if Mr. *Andrew Stuart*, when he went round to appriſe his Witneſſes of the Diſcoveries which were made from Time to Time, informed them, that they could not be convicted of Perjury for what they ſwore under no *French* Authority. But the Truth was, they were afraid of deſcending to more Particulars, for Fear of meeting ſtill more direct Contradictions.

CHAP.

CHAP. VI.

Of the Record of Police taken from Widow Selle's Livre d'Inſpecteur.

THE only Article of Evidence which remains to be conſidered, is the Entry in the Records of Police, whereby *Duverné*, to which Name the Fact is imputed, is found at the *Croix de Fer*
F. P. 53. B. on the 21ſt of *November*. Finding him there on that Day, the Purſuers ſuppoſe he ſtaid eight or nine Days, and no longer; for which they refer to the Witneſſes, who ſay four or five. And
—— 283. F. they ſuppoſe it impoſſible he ſhould have been there in *November*, and have returned again in
—— 285. D. *December*. In which Caſe he would not very likely be found a ſecond Time in the Books of Police; for in a former Part there has been full Evidence, that not a tenth Part of the Gueſts reſorting to theſe Inns, ever have their Names in the Books of Police: And particularly, that when even a Foreigner has been put there once, he is not put there again upon his Return to the ſame Houſe, as happened in the Caſe of Sir *John Stewart* himſelf, who lived at *Godefroi*'s in *Auguſt* 1748 five Days, and yet is not found in any of the Police-Books.—Now ſuppoſing this *Duverné* either a Foreigner or a Provincialiſt, nothing is ſo likely as that he ſhould alight at an Inn on his firſt coming to *Paris*, and remain ſome conſiderable Time before he could prepare for executing any Purpoſe he might have in taking away a Child, or return to the Inn to carry it into Execution.

At any Rate it would be a very unequal Manner of weighing Evidence, to raiſe the Inference from Books ſo imperfectly kept as the *Livres des Logeurs* and *du Commiſſaire*, againſt the preciſe and certain Teſtimony of thoſe Books, which are kept with unwearied Regularity in the Cloſet of the *Lieutenant de Police* himſelf, ſupported by the Oath of the Secretary who kept them. And yet, in the Judgment of all thoſe who do not weigh the Evidence in this very unequal Scale, Sir *John* was returned to *Rheims* on the 13th of *November*, and *Sanry*'s Child was taken away in the laſt Week of *December*.

But the Argument does not reſt even here. It will be ſhewn, that if all the reſt of the Evidence were blotted out, and their own Period, as it appears on the Book, allowed them for the *Enlevement*, they can do nothing with it. They have tried two ſeveral Ways, and both fail.

Their firſt Hypotheſis was, that Sir *John* came to *Paris* on ſome Day before the 19th of *November*, and lodged in the *Rue Franchourgeois*: That he went to the *Croix de Fer*, *Rue St. Denis*, ſome Time before the 21ſt: That he carried away the Child on *Saturday* the 29th of *November*, and returned to *Rheims* on *Tueſday* the 2d of *December*. And while no Dates whatever were in this Cauſe, they did triumphantly; they did as much as they think it neceſſary for them to attempt in this Cauſe; they left it poſſible that Sir *John Stuart* might have taken the Child as well as any other Man, who was then within ſeventy Miles of *Paris*: That is, he might, if he would; if, with three Children to provide for, and without a Farthing to buy them Bread, he had found himſelf in a Diſpoſition to wiſh for the Increaſe of his Family.

After this admirable Plan of Evidence was formed, and the Witneſſes had ſworn up to the
D. P. 389. Poſſibility of its being true, his Lodgings in the *Rue Franchourgeois* were ſeized by another Man; the 29th of *November*, when he ſhould have ſtolen a Child, was employed in his firſt Day's
—— 297. A. Journey from *Rheims* to *England*; and the *Enlevement* of *Sanry*'s Child was pinned down to the laſt Week in *December* by authentick Proofs.

CHAP. VII.

Laſt Hypotheſis of the Purſuers as to the Time of the Enlevement.

THE Purſuers have taken the Liberty to publiſh a Paper, called "*Mr.* Stewart's *Journal*," which can be looked upon in no other Light than a concerted Falſhood, which was made up apparently to be ſhown, either to miſlead his Employers, or to inſtruct the Witneſſes, or to ſerve both theſe honeſt Purpoſes. It is averred in this Piece of the Purſuers Evidence, that Mr. *D'Anjou* told Mr. *Stuart*, that the *Curé de St. Laurent* told Mr. *D'Anjou*, that the Widow *Selle* had told the *Curé*, that *Dumenil* told her, that the Gentleman, though he pretended to go to St. *Germain*, had taken the Route *de Champaigne*. This was a Falſhood invented for the Meridian of *Scotland*, for no *Frenchman* would have inferred that People were going to *Champaigne* meerly becauſe they went out of the *Port St Denis*, which leads to *Calais*, to *Peronne*, to *Bruſſels*; and *Champaigne* is the leaſt conſiderable Deſtination it points at. Accordingly when Widow *Selle* was examined, ſhe denied ſhe had ſaid ſuch Words; ſo did *Dumenil* and his Wife; and ſwore on the contrary, that

that *Duverné* went the oppoſite Way to the *Port de Paris*, which is at the ſouthern End of the *Rue St. Denis*, a long Street, of which the *Port St. Denis* is the northern Extremity. This was in the Number of thoſe Falſhoods uſed to draw his Employers into a Law-Suit, which they had no earthly Concern in, too far to get back.

Giving up a Caſe, meerly becauſe it was broken and diſſipated, was the worſt Thing which could happen to it. The Purſuers were obdurate, ſet themſelves to weave it anew. The *Enlevement*, on the 28th of *December*, was an impracticable Part, and, what was worſe, was the beſt proved of any Article in the Cauſe.---That Evidence, however, was to be rejected; and, ridiculous enough, the Inn-keepers Books are ſet up in Oppoſition to the moſt regular Records in the World.---The Lodging in the *Rue Francbourgeois* is given up as an unneceſſary Part of the Caſe, and thoſe ſame Inn-keepers Books are to do the Buſineſs againſt all the reſt of the Evidence.---Thus the Caſe is ſtated.

Sir *John* and his Family ſet out from *Rheims* for *Paris* on *Tueſday* the 11th, or *Wedneſday* the 12th of *November*; they arrived there on *Friday* the 14th, or *Saturday* the 15th. On *Sunday* the 16th he went to the *Curé* of St. *Laurent*; on *Monday* the 17th, or *Tueſday* the 18th, he viſited the Poor-Houſes. Two or three Days were taken up in the Tranſaction about the Child. On *Friday* the 21ſt or *Saturday* the 22d, they ſet off again for *Rheims*; they would arrive at *Rheims* by *Tueſday* the 25th, and then they would have three Days at *Rheims* to adjuſt their Departure:---But it happens that this Story claſhes in ſo many Points with their own State of the Evidence as to be totally impracticable.

The *Enlevement* of *Sanry*'s Child, indeed, ſtript of the only Date which fixes it, will apply with equal Preciſion to any Week between *Michaelmas* 1749 and *Lady-Day* 1750; and without more Straining than the Purſuers commonly uſe of Evidence, will eaſily take in a Year or two more: But the Dates their Argument fixes (after their Witneſſes are refuted) to Sir *John*'s Journey, cannot be ſo bent.

That Sir *John* ſet out for *Rheims* later than the 3d of *November*, is now contrary to all the Evidence which remains credible, as has been ſeen before.

That *Duverné* entered the Inn ſo early as the 14th or 15th, is ſupported by no Evidence; and ſuch an Imagination is croſſed by every Species of Probability.

To maintain this Imagination a Moment, they are obliged to ſuppoſe that an Officer, whoſe Duty it was to viſit the Inn every Day, omitted it for ſeven; which, once ſuppoſed, it becomes poſſible only that his Entry may have been on the 14th or any Day ſubſequent to that, without being returned till the 21ſt. P. P. 529. H.

This Imagination is founded ſimply on the laſt Return being on the 14th. The Records of Police are made up in three different States; *Regnicoles*, Military Men, and Foreigners. It happens that the firſt State is loſt; ſo that if the Officer did viſit the Houſe every Day, and did make daily Returns thereof to the Police, unleſs ſome Foreigner or Military Man had entered in the ſame Week, his Name would not appear in the Records. Thus *Duverné*, who deſigns himſelf a Foreigner, does not appear returned till the 21ſt; and the Probability is, that he did not enter till then. D. P. 174. C.

It ſhould alſo be obſerved, that no Entry will do for their Plan, but on the 14th in the Evening or 15th; becauſe their *Curé* has fixed that *Duverné* applied to him on a *Sunday*, or Holiday of the Week in which the Child was taken away: Now there was no Holiday, but two *Sundays* between *Tueſday* the 11th and *Sunday* the 30th of *November*.

The Quarter of St. *Jaque de la Boucherie*, in which the *Croix de Fer* lies, is the ſmalleſt, and conſequently the eaſieſt to be regularly viſited in all *Paris*.—In the ſame Quarter, the only Houſes which were found to have preſerved their Books of Police, were the *Couronne d'Or* in the *Rue Quincampois*, and another in the *Rue Mariveau*: And it appeared from theſe Books that the Officer had been round to viſit them on the 18th, though no Report appears in the Record; becauſe the Perſons found on the Books appeared to be *Regnicoles*; and of thoſe, as has been ſaid, the Publick State is loſt: Therefore, if the Entry of this *Duverné* had not been ſubſequent to the 18th, his Name muſt have been returned and recorded as a Foreigner of that Date, the 18th. App. to Def. Mem. p. 141, 142.

But the Purſuers ſay, the Entry in the Book may have been poſterior to the Entry in the Houſe. — To be ſure it may; but this is alſo to be preſumed: And is it thus they prove by Books?—The Books may be irregularly kept; in which Caſe their Dates prove nothing: From thence it is inferred that they may prove any thing.

And if this Imagination was allowed them, in the Face of all actual and probable Evidence, it would not do; becauſe, as *Dumenil* ſays, this *Duverné* (whenever he came to take away a Child) in two Days Time enquired of the People in Widow *Selle*'s Kitchen, if they knew any poor P. P. 285, E.

poor Perſon who ſtood in need of Aſſiſtance? They adviſed him to apply to the *Curé* of the Pa-
Appendix to P.P. 1073. E. riſh. The Purſuers alledge that he did follow this Advice, and apply to the *Curé* of St. *Sauveur*, the Pariſh where the *Croix de Fer* is; that this *Curé* refuſed to aſſiſt him; that he alſo applied to one Sieur *Marie*, who prevented the poor People of the Pariſh of St. *Sauveur* from being impoſed upon: If ſo, *Duverné* had done a great Deal of Buſineſs before he applied to the *Curé* of St. *Laurent*, and muſt have been in the Houſe long before he applied to him; conſequently the *Enlevement* could not happen the Week after the 14th; which is ſufficiently diſproved by theſe Conſiderations, if there were no more direct Evidence againſt it.

P. P. 270. C. —— 286. G. The Purſuers ſay, two or three Days were taken up in the Tranſaction about the Child; their Witneſſes ſay preciſely ſeven, after the Application to the *Curé* of St. *Laurent*.

—— 286. G. The Purſuers ſay, *Duverné* ſet off on *Friday* the 21ſt or *Saturday* the 22d; their Witneſſes, whom they refer to for that Purpoſe, ſay it was at Midnight on the *Saturday*; and yet that remarkable Circumſtance of being called out of Bed at Midnight on the 22d of *November*, is no Part of the Converſation reported ſo particularly from the Driver.

If they ſuppoſe Sir *John* and the Family drove about the Streets till a reaſonable Time in the Morning, and ſet out upon *Sunday* the 23d, he could not be at *Rheims* till *Wedneſday* the 26th; and as he ſet out for *England* on *Saturday* the 29th, not only Meſdames *Maillefer* and *Mayette* are perjured, but their favourite Witneſs the Abbé has another Falſhood to be added to his Liſt; for they can get Nobody to confine their Stay at *Rheims* to ſo ſhort a Time as that.---It has been formerly ſtated that *Iſabel Walker*, who mentions three or four Days as the Period of their Stay, upon taking the Whole of her Evidence together, agrees with the reſt of the Witneſſes, and allows fourteen or fifteen Days for their Stay at *Rheims* after their Return.

—— 261. C. Not to mention that one of their Witneſſes ſays, that Sir *John* appointed the Driver his Time, ſome Days before he ſet out, which is altogether inconſiſtent with their whole Story; but there is no End of multiplying Negatives upon a detected and manifeſt Falſhood.

This being the State of the Purſuers Evidence, the Defender has no Reaſon to complain that the Entries in *Benoit*'s Books, which prove that Sir *John* was at *Rheims* on *Friday* the 14th of *November*, has been kept up. Let the Purſuers enjoy the ſecret Satisfaction of having purſued the Truth, as they boaſt, with ſo much Candour, as to attempt this kind of Proof with a Copy, of that Book in their Pockets.

After having eſtabliſhed, that Sir *John* had in Fact left *Paris* full ſix Weeks before *Sanry*'s Child was carried off, and that the Dates of *Duverne*'s Tranſactions exclude every Application which the Purſuers can imagine to the Parents of the Defender, the Attention due to the reſt of the Cauſe requires that little Time ſhould be employed in ſhewing that *Duverné* and the Women he brought with him have no Reſemblance to Sir *John*, Lady *Jane*, and Mrs. *Hewit*; and that *Sanry*'s Child was in many Particulars remarkably different from *Shelto*.

CHAP. VIII.

Circumſtances with regard to the Perſons of Duverné, *and the Ladies who were with him; and the Child which* Sanry *loſt.*

THE Circumſtances which apply to this Tranſaction are:

1. That which they call a *remarkable* Coincidence in Point of Time, there being but ſix Weeks between Sir *John*'s leaving *Paris*, and the Fact of taking the Child away.

2. That the Perſons were *preciſely* three; a Circumſtance remarkably applicable to every three Perſons then in *France*.

3. That they were Foreigners; a Circumſtance rather more *remarkable* in the Application than in the Proof of it.

The Gentleman had deſigned himſelf in the Books of Police an *Iriſhman*, and was conſequently accepted for ſuch by the Family, and by all thoſe who reſorted to the Houſe on this Occaſion; and this the Purſuers call a Confirmation, that they were *really* Subjects of *Great-Britain*.

That this Deſignation may have raiſed or confirmed that Idea in the Minds of thoſe who were concerned with *Duverné*, is not improbable; but it operates juſt the other Way with any Perſon capable of beſtowing a Moment's Reflection upon it. The Man who diſguiſes himſelf, generally aſſumes a Deſignation as different as may be from that which really belongs to him; and that of a *Britiſh* Subject, is the laſt Deſignation a *Britiſh* Subject would think of diſguiſing himſelf under.

This

This Notion, ſo raiſed, may have given Riſe to ſuch another, that his Accent was foreign; which the *Curé*, however, did not obſerve: Not to mention the great Eaſe, with which any Body who has an Ear, may break their own Language ſo as to give it a foreign Accent, if that was the Sort of Diſguiſe they choſe, as *Duverné* appears to have done. And the *French* Language muſt have been at heart very familiar to them all, if not their native Tongue; becauſe, when the Ladies ſhewed Surprize upon the Woman *Dumenil*'s coming into the Room while the Gentleman was talking to them, he ſaid in *French*, that they need not be afraid, it was only the Maid of the Houſe: Now, if this is ſo, *French* had been extremely uppermoſt with them all. The Probability ſurely is, that if they were Foreigners at all, which remains very uncertain, at leaſt they were not *Britiſh*. Of that there is not the leaſt Veſtige but the Entry in the Book, which ſeems to prove the contrary. P. P. 283. D.

It appears alſo, that the Gentleman knew ſo little of the Country he aſſumed, that in the Name of a Town in *Ireland* he had heard of, he *wrote it*, as he had heard it pronounced, *Korgue*; and ſo of the Name *Verney*, he wrote it *Duverné*: Now it is impoſſible for any Man who wanted to aſſume the Deſignation of *Iriſhman*, and who underſtood the *Engliſh* Language, to have wrote theſe Names.

4. The next Article of Application is the Agreement of the Perſons: But as this does not happen to be true, the Argument runs, That as the *Enlevement* and the Opportunity of the Witneſſes to ſee the Perſons are not denied, the *Diſcrepancies* in perſonal Deſcriptions form no Objections; which is as much as to ſay, they may be the ſame Perſons, though the Witneſſes ſay otherwiſe. Another Obſervation made upon theſe *Diſcrepancies* is, that it ſhews the Witneſſes were left to their own Recollection; a very extraordinary Piece of Candour indeed, for the Purſuers to aſſume. *Neſcis quid Mali portat hæc Purgatio.*

The Truth is, that all thoſe who deſcribe *Duverné*'s Perſon, with Reference to any Body then preſent, prove it was not Sir *John*, but a Man remarkably lower and fatter; two Articles which muſt take the Obſervation: The reſt are Terms altogether indefinite---tall, thin, fat, robuſt, ſtrong, ſwarthy, military. —— 282. K. —— 285. K. —— 287. F.

The only two who attempt his Dreſs, are *Dumenil* the Waiter, who ſaw him write his Name and Deſignation: He ſays, he had a Coat *du Coleur de Canelle*, and a Wig *a l'Angloiſe*, which is their Term for a Bob-Wig; which means that he diſguiſed himſelf like a *Britiſh* Subject: For Sir *John* is proved, when he was not diſguiſed, to have worn a Wig with a Bag or Tail to it; and *Vieille*, who knew Nothing of his Deſignation, gives him a Tye-Wig, and white Coat, like a *French* Officer. —— 285. L. —— 279. G.

The Women who came along with *Duverné*, according to *Dumenil*, were both tall and thin; one Forty-five, the other Thirty: The firſt and eldeſt was the Gentleman's Wife; he acknowledged her, he treated her as ſuch: She appeared to be the Miſtreſs, and the Younger appeared to be her Attendant by the Sort of Services (*Soins*) ſhe did for her. —— 286. B. D.

Dumenil the Wife deſcribes their Perſons in the ſame Manner, except that ſhe adds of the eldeſt Woman, that ſhe was fuller than the youngeſt. The eldeſt Woman careſſed the Child, (ſhe being to appear as the Mother) the other looked at it with Indifference. —— 282. K. —— 283. C.

Le Gris, *Sanry*, and his Wife, perjured themſelves in the Deſcription of the Child; and they deſcribed the Ladies ſo, as to account for the Purſuers anticipating the Charge they expected of leading the Witneſſes.

Le Gris deſcribes the Lady who came to *Sanry*'s Houſe, as having a Hood which fell down over her Eyes; ſhe was, however, pale and white; her Face neither fat nor lean, very tall, thin and well-proportioned, well-dreſſed, and a Foreigner, about Thirty-five, and of great Quality. The two *Sanrys*, not knowing how the Purſuers meant to diſpoſe of this Deſcription, know nothing of the Lady who came to their Houſe; but they found at the Inn another Woman in an Undreſs, who was exactly as *Le Gris* deſcribed the firſt, pale and very white, very tall, very thin and well-proportioned, thirty-five, and with a noble and foreign Air. —— 272. F. —— 292. I.

Laupin and *Grevain* went no further than pale and wan. —— 280. G.

Duverné's Wife had a red Cloak: Lady *Jane*, nor Mrs. *Hewit*, never had ſuch a Thing. —— 281. H.

As to their Language, the elderly Lady, who appeared to be the Gentleman's Wife, went to *Sanry*'s; and, as *Le Gris* ſays, held a long Converſation to perſuade the Woman *Sanry* to part with her Child. The Woman, who was left at the Inn, uttered ſome few Words, which the Woman *Sanry* underſtood: So the Huſband ſays of that ſame Woman which was left at the Inn, that ſhe talked but little, and, as he judges, with a foreign Accent. —— 276. C. —— 296. B.

Upon this Evidence it is to be obſerved, 1. That Mrs. *Hewit*, the *Fille Perverſe*, who was repreſented by the *Michels* as a brawny broad-ſhouldered Piece, like a Man in Diſguiſe, is quite out of the preſent Scrape. 2. That the Perſons who were really with *Duverne* were both thin,

very tall, which differs again from Lady *Jane*; the elder the Wife, the other the Attendant, which differs ſtill more from both; and that both ſpoke *French*. 3. That *French* was ſo much more familiar to them all than any other Language, that they dropt in *French*, even what it would have been more natural to expreſs in any other Language, if it had occurred to them: And that *Duverné* could be no *Britiſh* Perſon is clear from his Writing his Name *Duverné*, and his Deſignation *Korgue*.

And yet wonderful as it may ſeem, this is really the whole Ground upon which the Purſuers can argue, that the Perſons in Queſtion were *Britiſh* Subjects.

5. They came in a Hackney-Coach to the Inn, and ſo they went away; which the Purſuers ſay, is very peculiar in *Paris*. It may be ſo; but the Evidence in this Cauſe furniſhes the Inſtances but of nine Perſons arriving, who all nine went to their reſpective Lodgings in Hackney-Coaches.

6. They had no Servant. Unleſs one knew a little more of *Duverné* than the Purſuers have yet diſcovered, it is impoſſible to ſay, whether that was extraordinary or not on his Part. Why Lady *Jane* came without a Servant is obviouſly explained; becauſe, if ſhe had not been content with Mrs *Hewit*'s Attendance, it would have been impoſſible to have come at all, as their Carriage would not hold another; and it is well-known that Poſt-Chaiſes are difficult to be had at *Rheims*.

7. They drank Tea.—This is calculated to ſhew their Addreſs in ſmall Argument. They are proved not to have been at *Godefroi*'s from the 4th to the 7th of *July*, 1748, becauſe they drank no Tea, and ate no Butter; though it is clear beyond a Doubt, that they were there for that whole Period. They are proved to be at *Godefroi*'s from the 9th to the 14th, becauſe Somebody elſe ate Butter, but drank no Tea; though it is clear beyond Doubt, that they were not there a Moment of the ſecond Period: And they are proved to be at the *Croix de Fer*, becauſe *Duverné* drank Tea; though it is now beyond a Doubt, that Sir *John* and Lady *Jane* were then drinking Tea at *Rheims*.

8. The next Article of Application is the extraordinary Likeneſs of *Sanry*'s Child to *Sholto*.

To ſettle this, it ſhould firſt be ſeen what kind of Child this *Duverné* wanted. The only expreſs Evidence of this is the Declaration made by *Sanry* to the Woman *Dumenil* at the Time, and before Mr. *Andrew Stuart* had ſeen him. His Account was, That the Gentleman was ſo charitable as to offer to take any of the nine Children which were moſt burdenſome; which proves, that even the Choice of the Child he took was *Sanry*'s, and not *Duverné*'s.

P. P. 285. A.

All the Contradiction this Idea has received, ariſes from the ſubſequent Depoſition of theſe People, who now would have it believed, that after ſeeing the reſt of their Children, the Gentleman aſked for a Younger before it was propoſed to him by themſelves; a ſlender Difference to bear in Mind ſo long, eſpecially in Oppoſition to what they declared at the Time, when no Intereſt or Labouring preſſed them to falſify.

This is ſaid to be all the Evidence, becauſe the Story told by *Le Gris*, if ſhe were otherwiſe credible, amounts to no more than this, That he refuſed many Children, Boys, and Girls, without any Reaſon given or appearing.

—— 285. F.

The Points of Reſemblance between the two Children were, that both had blue Eyes, fair Complexions, and fair Hair; which Points of Likeneſs they had in common with about Half the Children born in the Year 1748. The Points in which there was ſome ſmall Difference were, 1ſt. That *Sanry*'s Child had a remarkable Pit beſide its Eye, which *Sholto* had not. 2d. That *Sanry*'s Child had a Diſtemper called the Falling of the Breaſt-bone, which *Sholto* had not.---This was a more remarkable Circumſtance than the other: It is ſet forth in the *Plainte* of the 24th of *June*, as the People and *Le Gris* had told it. They remembered alſo, that both *Le Gris* and the Woman *Sanry* were at Pains to ſhew the Manner of raiſing it again---the habitual Remedy, as the *Plainte* calls it. But unluckily, as Mr. *Andrew Stuart* thought himſelf at Liberty to tell his Witneſſes what Diſcoveries were made in the Cauſe, it was diſcovered that *Sholto* had no ſuch Diſeaſe: Whereupon *Le Gris*, *Sanry*, and his Wife, truſting, it is ſuppoſed, to the Secrecy of Mr. *Andrew Stuart*, ſwore that they had told the Gentleman that the Child had no Diſorder.---3d. That *Sholto* was very ſmall of his Age, and notably ſmaller than his Brother *Archibald*; which could not be, if the firſt had been born four Months before the latter.---4. *Sholto* could not ſpeak a Word till ſeveral Months after he was brought home; in ſhort, never ſpoke a *French* Word: *Sanry*'s Child could already babble Papa, Mamma, and ſome ſuch other Words; which is deciſive, unleſs he alſo was an Accomplice.---5. *Sanry*'s Child could walk, though but feebly: *Sholto* could not walk at all till ſome Time after he came into *England:* Nor indeed did *Archibald*, whom all agree to be a larger, ſtronger Child, walk or talk before he got to *England*, though he had ſomewhat the Start of his Brother in both.---6. *Duverné* carried off the Child in a red Mantle laced with Gold: Poor *Sholto* was wrapped in Dimities and Flannels, and never was poſſeſſed of ſuch a Piece of Finery while he lived.

—— 281. B.
—— 282. B.
D. P. 1030. F.
P. P. 275. K.
—— 531—19.
D. P. 410 C.
—— 366. F.
P. P. 295. H.
D. P. 367. A.

PART

PART IV. BOOK IV.

Lady JANE's Situation, and Conduct, at MICHEL's.

CHAP. I.

General Obſervations.

THE next Branch of poſitive Proof attempted by the Purſuers, is to ſhew, from Lady *Jane*'s Situation at *Michel*'s, and the Incidents which fell out there, that ſhe had not been delivered on the 10th of *July*.

The firſt Topic conſiſts altogether in the Deſcription of the Perſon and Demeanour of Lady *Jane* and the Child: The ſecond in certain Jaunts ſhe is ſuppoſed to have made about *Paris*, to St. *Germain*, and even to *Verſailles*; among which are inſerted certain negative Articles, ſuch as no Midwife's coming to ſee her, *&c.*

In order to form a Judgment of any Part of the Purſuers Evidence, it is always neceſſary to recur to the Hiſtory of their acquiring it. This Cauſe has been ſo managed by the Conduct of him who went over to *France* out of pure Love to Truth, that his Witneſſes are unintelligible, without the Hiſtory of that Conduct to explain their Depoſitions.

Michel's was the Quarter in which this Attack, for the Sake of Truth, began. It happened that the Entry of Sir *John* was of an erroneous Date, *on the 8th of* July 1748.---Mr. *Andrew Stuart*, who had often ſeen his Writing, knew it to be his Hand. After conſidering it with Attention, he was perſuaded it was his Hand; and for the Sake of rendering a previous Delivery in the Month of *July* impoſſible, they aſſerted that the Child brought to *Michel*'s Houſe was even then ſome Months old.---That the Witneſſes were ſo inſtructed before their Examination, is clear from that Expreſſion being found in the *Plainte* to the *Tournelle:* That ſuch Inſtruction was confined to the *Plainte* is ſufficiently improbable from the very Circumſtance of their taking ſo indirect a Step; after which, their Pretence to Integrity deſerves no more Confidence. But how they talked to their Witneſſes does not reſt here; for Mr. *Andrew Stuart* happens to have thought it a Subject to boaſt of in that Memorial of his, which he calls a *Journal:* He aſſured Mad. *Michel*, that the Impoſture was detected, and that the Father and Mother of one of the Children was diſcovered.---This was a ſtrange Way of talking to a Witneſs who had complained that ſhe was unfairly and partially examined; that ſhe knew more of the Matter than any Body; and that Lady *Jane* had the ſickly Face and Air of a Woman lately brought to-bed. The oſtenſible Reaſon of this was, that one Captain *Livingſtone*, who had nothing earthly to do with the Cauſe, had mentioned to her ſome Articles of univerſal Notoriety.—Sad Excuſe! for labouring a Witneſs, and preſſing her Memory out of the Circumſtances ſhe really retained. But ſuch Treatment would, no doubt, make the pointed Deſcription they had been uſed to give of her Sickneſs grow leſs ſtrong, and introduce new Imaginations of the Age of the Child. Appendix to P. P. 1110. H.

Accordingly the Entry on the 8th of *July* was fixed by a forged *Procès verbal*, and the reſt of the *Plainte* was anſwered by a ſlight and imperfect Examination of the Witneſſes in the *Tournelle*. D. P. 1059. F.

While all their Witneſſes upon this Part of the Caſe were under Examination, the Plan conſiſted of nearly a Month's Reſidence at *Michel*'s Houſe.

After *Duruiſſeau*'s Perjury came to light, they reſorted to another Plan, whereby they have choſen to take them from *Godefroi*'s on the 14th of *July*, and place them at *Michel*'s on the 18th. In which they likewiſe miſrepreſent; for Lady *Jane* did not go there till the 20th.—This Variation in the Date has put all the Story into Confuſion, and has proved many Parts of it abſolutely impoſſible, and not to have ſprung from their own Memories, but from the Infuſion of others.

CHAP. II.

Lady Jane *arrived at* Michel's *on the* 20*th of* July.

THE 18th of *July* is choſen by the Purſuers as the Date of Sir *John*'s and his Family's Entry to *Michel*'s, partly to accommodate with the exploded Story of *Mignon*; and partly to give Time for the Incidents by which Lady *Jane* is to be proved out of the Condition of a Woman brought to-bed on the 10th.

And yet the Accommodation of it with their own Story of *Mignon* is as ill preſerved, as if they had not had the making of it; for if the Child is ſuppoſed to have been taken on the 18th, and to be lodged as they ſay in one Houſe, while Lady *Jane* was herſelf lodged in another; no Reaſon can be imagined, why ſhe did not continue herſelf, and the Child ſo lodged, till both might have been ſhewn, without a Circumſtance to raiſe Suſpicion. She might have taken her own Time to get a Nurſe, and they might all have come together to *Michel*'s, not liable to a ſingle Queſtion or Doubt. The Purſuers ſuppoſe there was Danger in ſtaying where they were. What Danger? Their own Hypotheſis places her clear of the Child; and could he be in any Place leſs ſecret than Nurſe *Favre*'s? for the *Rue Serpente*, where ſhe and the Child, ſuppoſed to be ſtolen, lived publickly, was within half a Furlong of the *Parvis* of *Nôtre Dame*, where it is ſaid he was taken, and of the *Rue Mazarine*, where the Takers are imagined to have ſlipt the Purſuit. No guilty Reaſon can be imagined for their coming there, as they confeſſedly did; and if it muſt have been innocent, where is the Uſe of trying to confound it?

On the other Hand, the 18th is altogether inſufficient for the Incidents which are ſuppoſed to have happened after Lady *Jane* came to *Michel*'s; but it will be proper to refer to the Evidence, and fix the real Time of her Arrival at that Houſe.

Serv. 34. E. P. P. 62. E. As to the Time of her Entry to *Michel*'s, Mrs. *Hewit* wrote to the Maids, that ſo ſoon as the ninth Day was over there was no confining her longer to her Bed. With this Sir *John*'s Letter to Lord *Crawford* concurs, in ſo far as it ſhews that the ninth Day was regarded by them as the End of the dangerous Period. Mrs. *Hewit*'s Letter is further confirmed by the Depoſition D. P. 367. E. of *Iſabel Walker*, who was told by Mrs. *Hewit*, after ſhe returned to *Rheims*, that it was after the ninth Day from the Delivery that Lady *Jane* changed her Lodgings, *i. e.* on the 20th of *July*. P. P. 17. E. In the Note which Sir *John Stewart* gave to Mrs. *Napier*, the 20th is mentioned as the Day of en- Serv. 12. D. tering into *Michel*'s. Mrs. *Hewit* on the Service ſwore, that Lady *Jane* remained in the Houſe Decl. 2. H. where ſhe was delivered for ten Days, and then went to another, on Account of Bugs. In this ſhe is confirmed by Sir *John*, in his Anſwer to the Expiſcation of the 14th of *December*, which P.P.*407.* D*. was to ſerve as the Baſis of the *French* Proceſs. The Purſuers have alſo produced Lady *Jane*'s pri- P. P. 851. C. vate Pocket-book, from which it appears that they began with *Duchenois*, the *Traiteur*, on the 20th. This is the Perſon whom all the *Michels* ſay furniſhed them with Victuals during the whole Time of their Reſidence in this Houſe.

But all this, it ſeems, is Falſehood and Perjury: 1. Becauſe the drunken Maid at *Michel*'s wrote him down as entering on the 8th. Now it was the Method of her Drunkenneſs to miſtake ten Days, neither more nor leſs. This judicious Obſervation, though in other Reſpects not at all beneath the Purſuers, does not bear them through; becauſe he might have taken the Lodging two Days before he entered. 2. Lady *Jane*'s Pocket-Book confirms them in their Hypotheſis; becauſe they wanted nothing the firſt Night, viz. the 18th. On the 19th they went out; and as they returned in the Evening, they wanted nothing the ſecond Day, the 19th. The 20th, therefore, was the Day on which they commenced, according to this Syſtem, with the *Traiteur*. It will be ſeen hereafter, that they did not go out: But as the Argument admits their beginning with the *Traiteur* to be an Æra, and only doubts whether it happened on the firſt or the third Day; Mad. —— 849. C. *Michel* proves it happened the firſt, for ſhe ſpeaks of their ſupping the firſt Evening; and if ſhe had not, the Probability of the Thing would have been Ground enough to preſume ſo much in Favour of all they have ſaid and ſworn: This is ſomething like the Suppoſal at *Godefroi*'s, that —— 183. F. they went without any Breakfaſt for ten Days together.—3dly. Mrs. *Hewit* wrote a Letter on the 11th of *January*, 1763, to Mr. *Harper*, in which ſhe ſays, they went away on the ſixth Day after her Delivery. This is rather inſinuated, than inſiſted upon, becauſe it does not conform to their preſent Syſtem: The Uſe they make of it is, on another Occaſion, to ſhew that Mrs. *Hewit* ſwore falſe. She wrote that Letter broken with Diſeaſe, and in Contemplation of Death; and ſhe meant honeſtly, but her Memory failed her: And if this is to be underſtood as a more ſerious and deliberate Act, let them take the Whole together, and, then ſtepping into Eternity, ſhe ſtakes her Soul on the Truth of Lady *Jane*'s Delivery. But the Purſuers will not take even this for a ſerious or deliberate Act; it was a Trick to make her Evidence conformable to the Diſcoveries which ſhe had juſt then heard Mr. *Andrew Stuart* had made at *Michel*'s. If ſhe had followed the groſs Falſhood in Mr. *Stuart*'s Letter of the 20th of *November* preceding, ſhe would have made it the 8th; if the 18th had been the real Day, ſhe would have conformed to that; and if ſhe had meant to confirm Sir *John*, who was then very recently examined, ſhe Decl. 2. I. would have ſeen that her Oath on the Service was conformable to what he had declared. It can Serv. p. 35. therefore be brought to nothing but Infirmity, and mere Error. At the Foot of this Letter the Purſuers refer to her Letter of the 22d of *July* 1748; which being writ recently, ſerves to correct the Miſtake; and to her Examination afterwards in the Month of *June* 1763, where ſhe made no Mention of her ſuppoſed Miſtake; which proves, that it was no more than temporary. 4thly. Mrs. *Hewit* wrote to the Maids on the 22d of *July*, that *ſome Days after* Sir *John* found the

the Nurſe drunk; which ſhews, that they muſt have entered the 18th.—Whoever looks at the Words immediately preceding, will find thoſe ſome Days to be not after coming to *Michel*'s, but after ſending the Child to the Nurſe, who was found drunk: This Miſquoting is rather a dexterous, than a ſolid Way of arguing.——They ſay alſo, that this Letter imports the Child to be in the Hands of Nurſe *Favre*; which did not happen till the ſecond Day, at leaſt, after their coming there: True, and therefore it was not Nurſe *Favre* ſhe ſpoke of, as will be ſhown more at large hereafter.—They remark alſo, that ſhe calls him a *ſturdy Piece*, which was not ſo till he had been a Night or two in Nurſe *Favre*'s Cuſtody. According to their own Idea, he had been but one Night in the Cuſtody of his then Nurſe, *viz.* the Night of the 20th; ſo that this makes Nothing to their Purpoſe: The Obſervation will be material hereafter.

This being all the Proof of their Falſhood, it ſtands undiſputed, that Lady *Jane* entered to *Michel*'s on the 20th; and this leaves an Interval of thirteen Days, which they purſue with no Kind of poſitive Evidence. The Story which the Witneſſes have told of that Interval is only pelted with Obſervations, which will be conſidered hereafter.

CHAP. III.

Lady Jane's *State of Health at* Michel's.

THE firſt Topick by which they diſprove Lady *Jane*'s Delivery is, her Appearance and Habit of Life at *Michel*'s.

The Evidence on that Head ſtands thus: After being uneaſy the Night of the 9th of *July*, and her Diſorder becoming obſervable next Day about ten o'Clock, ſhe was taken with Labour-pains about twelve, and delivered about four of two Children, with the Interval of Half an Hour between: From which Time Mrs. *Hewit* writes, that ſhe recovered as well as it was to be expected, without one back-going Hour. Serv. p. 12. C. P. P. 252. K. —— 254. F. Decl. 5. E. Serv. P. 34.

Sir *John Stewart*, in a Letter of the 21ſt of *July* to Lord *Crawford*, ſpeaks of her recovering wonderfully; and of his Hopes, that now the ninth Day, being that which the wiſe Women call Critical, is over, ſhe is out of Danger. Mrs. *Hewit*, in her Letter of the 26th, ſpeaks of her as recovered to a Wonder, not indeed without the greateſt Care; but ſhe is ſtill very weak, and ordered by the Doctor into the Country in eight Days, to make her fit for her Journey to *Rheims*. P. P. 62. F. Serv. 35. C.

This being Lady *Jane*'s Condition when ſhe came to *Michel*'s, the Purſuers undertake to prove, that her Appearance and Habit were ſo abſolutely incompatible with it, as from thence to draw a Diſproof of her being delivered at all.

Mad. *Michel*, their firſt Witneſs, ſays, that ſhe was tall and thin, extremely white, had a ſickly and melancholy Air, but before her Departure ſhe looked a little more lively; but ſhe cannot ſay whether ſhe grew ſtronger or not. P. P. 849. A. —— 853. G.

Michel, the Huſband, ſays, that ſhe was very pale, and had the Look of Sickneſs; that her Head was dreſt *en Negligé*, like a ſick Perſon: And he remembers alſo, that his Wife told him at firſt, ſhe looked like coming out of ſome Sickneſs, without ſaying what; which can only mean, as will be ſeen hereafter, that he does not remember what. —— 858. H. —— 861. G.

Breval, their Son-in-law, who lived in the ſame Court, ſays, that ſhe was pretty tall; that ſhe was thin, and delicate, and pale like a Woman coming out of her Lying-in, or ſome great Sickneſs. —— 876. D.

Blainville, another of their Witneſſes, ſpeaks of her as very pale, and extremely thin, with the Look of a Woman newly brought-to-bed, or coming out of ſome Sickneſs: Both ſhe and *Breval* obſerved, that her Windows were always ſhut, even while her Room was in Sweeping, which they looked on as a further Sign that ſhe had been brought-to-bed; for they reaſoned with each other, that the Air was bad for Women who had lately lain-in. —— 868. G.

Mad. *Michel* remembered in the Year 1756, that Lady *Jane* had kept her Bed on Account of her Lying-in; ſhe kept cloſe within; but Nurſe *Favre* does not remember her going to Bed ſooner than ordinary; and Mrs. *Hewit* thinks ſhe did not keep her Bed much at *Michel*'s on Account of the Heat.——Mad. *Michel* could have meant no more, therefore, in 1756, than her lying down upon the Bed, and the Cloſeneſs with which ſhe kept herſelf up; and this alſo agrees with the Habit ſhe was obſerved to be in at *Dammartin*, and in the firſt going to *Rheims*, of lying down upon the Bed. —— 4. F. —— 883. D. —— 253. K. D. P. 596. C. —— 594. A.

Favre deſcribes her as very thin and lean, and the Air of ill Health; that ſhe always drank warm Things, in a ſilver Goblet which the *Traiteur* had lent her. This agrees with Mad. *Michel*'s P. P. 883. D. —— 851. D.

Michel's Account, that ſhe took a great Deal of Tea *throughout* the Day; and that ſhe was much fatigued with boiling their Water on Account of the Heat.——The warm Drink which Lady *Jane* took throughout the Day, ſhe, who had no Opportunity of diſtinguiſhing, called all Tea.

Thus far their own Evidence ſeems to run quite counter to their Object; but they ſay, that thus far it proves Nothing, becauſe, as to Lady *Jane*'s Appearance, ſhe was always pale.—The habitual
P. P. 300. F. Paleneſs of Lady *Jane*'s Complexion, as it is deſcribed by Lords *Morton* and *Cathcart*, was ſuf-
—— 85. E. ficiently diſtinguiſhed from Unhealthineſs; and it is very remarkable, that on her Journey from *Rheims* to *Paris*, they have laboured to prove her Look ſo healthy as to be remarked by their Wit-
—— 915. C. neſſes; nay, one of them goes ſo far as to impute a red Colour to her Cheeks. Their own Wit-
—— 898. E. neſſes have eſtabliſhed a ſufficient Difference before and after lying-in, if indeed it is imaginable, that People, at firſt Sight, could not diſtinguiſh between the habitual Paleneſs of a Perſon in Health, and the faint Complexion of one ſick. And though the Witneſſes they rely upon had no Opportunity to make the Compariſon, yet others, who had better Opportunities, had confirmed them in their Idea of its being the Complexion of Sickneſs and not of Habit.

Beſides, it appears, by the Teſtimony of the Witneſſes above referred to, that ſhe recovered her Looks and Appearance during her Stay in their Houſe, which could not have been the Caſe if all her Paleneſs and Weakneſs was natural to her.

—— 853. G. 2. They ſay, that three of their Witneſſes deſcribe her with flat Breaſts; which is inconſiſtent
—— 849. B. with her Situation. The ſame Witneſſes deſcribe, that ſhe was always dreſſed in a large Handker-
—— 858. H. chief up to her Chin. The Stay ſhe made there was from the 11th Day after her Delivery, to the
—— 868. H. 25th; and from what Period they date their general Obſervation of her Thinneſs and Flatneſs, *en Gorge et Ventre*, which they always put together, is impoſſible to be aſcertained; nor in Truth, in the View wherein it is now applied, is it at all material. A Woman's Milk is ordinarily at the Height on the 4th or 5th Day; and if it be diſcuſſed then, as it always is when ſhe is not to give ſuck, it will ſometimes go off about the 9th or 10th Day; or if it be longer in going off, it will diſcuſs gradually, ſo as to ſink the Breaſts, all the While, to their natural Size: And yet this was once inſiſted upon ſo high, that it was imputed to Lady *Jane*, as a Mark of Fraud, that ſhe did not ſuckle the Child on the 11th Day when the Nurſe was found bad; as if there could have been a worſe Nurſe than a Woman in her Situation. The beſt Thing to be wiſhed was, that ſhe had no Milk; for if ſhe had tried, and if any had remained undiſcuſſed and ſtagnating, it would have gone near to kill
D. P. 396. the Child.---And *Iſabel Walker* ſays, that Mrs. *Hewit* wrote to her, that though Lady *Jane* had been at firſt much troubled with her Milk, ſhe had got Relief by the Plaſters which the Doctor preſcribed to her.

3. They remark, that ſhe did not *go to Bed* earlier than ordinary. It has been explained before, that ſhe did not lie much in Bed on Acount of the Heat; but nevertheleſs ſhe might lie down on the Bed, and take the Repoſe which her Weakneſs required, as it is proved ſhe did afterwards at *Dammartin* and *Rheims*.

4. They ſay that the warm Drink ſhe took, being only Tea, neither that nor any other Circumſtance diſtinguiſhed her Habit of Life to be that of Ailment. This is ſaid on Nurſe *Favre*'s Evi-
P. P. 883. E. dence, who in the very next Line, if it had been convenient to look ſo far, ſays that ſhe was better at *Dammartin*, and eat and drank as the other People did; pointing out that ſhe ſpoke of two different Habits of living, one referable to her former Sickneſs, the other to Health.

—— 850. H. 5. That Mrs. *Hewit* lay in the ſame Bed with Lady *Jane*, is alledged as a Proof that ſhe had not re-
——853. F. cently lain-in. The Incident ſeems at firſt Sight indifferent; but conſidering their Situation, it is the ſtrongeſt Article of circumſtantial Proof which Accident could be expected to turn up, of the Truth of the Story. It is in Proof that *Michel*'s Houſe was at that Time full, every Apartment being occu-
Serv. p. 34. D. pied. The Nurſe with whom Mr. *Douglas* then was, was found drunk by Sir *John*, when he went to ſee him. Lady *Jane*'s Anxiety to have him under her own Eye returned upon her, though ſhe had been prevailed upon ſo far as to ſend him out before, ſhe was now determined, as Mrs. *Hewit*
—— 34. E. wrote at the Time to the Maids, that he ſhould go no more out of their Sight. To keep him therefore in Sight, it was neceſſary that the Nurſe ſhould have Mrs. *Hewit*'s Bed. And this is the Account of Mrs. *Hewit* lying in the ſame Bed with Lady *Jane*.

Such is the Argument to prove that Lady *Jane*, at coming to *Michel*'s, had not the Look, and did not uſe the Habit of a Woman recently lain-in.---The diſtinguiſhing Features of the Caſe upon which that Argument proceeds, are the Figure of Sickneſs, warm Drinks, Rooms cloſe ſhut up in *July*. All the Witneſſes deliver their own perfect Conviction, that ſhe was a real Mother of that her real Child. But the Witneſſes, it is ſaid, are partial to the Defender. It has been ſeen that is no Fault of the Purſuers Agents. They were indeed partial before either Party went to *France*, while their Memories were freſh, and even later than that, before they were preſſed with confident Menaces, that their Accounts were to be diſproved and refuted; and it will be difficult to perſuade, that

that ſuch cavilling Inferences as theſe, made at the End of ſeventeen Years by intereſted Strangers, is a juſter Account of what they ought to have thought, than the Reflection made by themſelves, at the Time, and retained, after Thouſands of Circumſtances which gave Riſe to ſuch Reflections, are loſt and effaced by Time.

Upon this very Decay of Memory Half the Argument is built. The Purſuers think they have a Right, in the Courſe of fair Argument, to preſume, that what the Witneſſes have forgot, no ſuch Circumſtances ever exiſted; and of all they miſremember, that it is correctly told.

CHAP. IV.

It was known at Michel's, *that Lady* Jane *had been delivered of Twins recently before her Arrival there; and that ſhe was viſited by the Surgeon, or* Accoucheur.

FROM what the Witneſſes have forgot, they infer, That Lady *Jane* was viſited by no Phyſician, Surgeon, or Midwife; that it was ſuppreſſed from the People at *Michel*'s, when, and of how many Children Lady *Jane* was delivered.

That the People at *Michel*'s have forgot many Circumſtances in which they had no Sort of Concern, or were of no Importance, is undoubtedly true; but it is equally true, that they were all known to them; ay, and talked of by them at the Time.

Madame *Michel* ſays, that ſhe remembers well hearing from *Blainville*, at the Time, that a Phyſician or a Surgeon, ſhe forgets which, viſited them: Nurſe *Favre* alſo remembers, that a Gentleman, dreſſed in Brown, dined with them, whom ſhe took to be a Shopkeeper. It is not very likely, that a Shopkeeper would have dined with them. This ſerves to ſhew what is the Weight of the *Michels* now forgetting that any Body came to viſit them. That the Time of her Lying-in, and the Twins, were the Subject of their then Converſation, is plain from this: On the 21ſt, which is the ſecond Day of their Arrival, Mrs. *Hewit* wrote to the Maids, that Lady *Jane* was delivered of Twins on the 10th. Nothing is better proved in the Cauſe, than that they preſſed Nurſe *Favre* to go with them to *Rheims*. They gave her the Cloaths which they had provided for the former Nurſe, in order to take her with them to the ſame Place; and gave her Huſband Cloaths, and offered to eſtabliſh her Huſband as a Maſter Joiner there, if they would go. Sir *John* thought he had prevailed, and went into a violent Paſſion with them when they refuſed to go. This is atteſted, not only by *Favre* and the Huſband, but Madame *Michel* alſo remembers the Propoſal being made to carry her to *Rheims*. Now is it poſſible to imagine, that they would attempt to conceal the Date of the Delivery, and the Birth of Twins, from thoſe very People, who muſt hear of it the Moment they went to *Rheims?* or that the Appearance and Habit of Lady *Jane*'s Life did not correſpond to ſuch Accounts, when they wanted ſo earneſtly to take along with them a Witneſs who muſt have betrayed them, if they had any Thing to betray?—

P. P. 851. I.
—— 881. G.
Serv. p. 34.
P. P. 879. D.
—— 881. A.
D. P. 591. C.
—— 592. A.
P. P. 851. E.
—— 853. B.

But this is not all: *Favre* told Mad. *Daux*, at *Dammartin*, at the Time, that the Lady had been brought to-bed of Twins; and ſhe recollected it at the Time of her Examination, tho' with much Confuſion. She thought ſhe had collected it from Mrs. *Hewit*, who dropped the Word *cher* and the Word *deux*. This, if it ſtood alone, might be called a very faint and obſcure Source of Memory, if the Purſuers had not thought it worth falſifying the Evidence to combat it. They miſprint the Word *deux*, *doux* in *Italicks*, and then argue it to be an abſurd Way of making an Inference in the Nurſe. But what will be ſaid of the Gentleman who went over to *France* in Purſuit of the pure Truth, if it appears, that before either Proceſs began in *Scotland* or *France*, he was told by Nurſe *Favre*, that ſhe had been appriſed of this Circumſtance? In the Memorial of *November* 1762, and in that ſhameful Report which *Buhot*, in Fraud of his official Duty, was prevailed upon to make to the *Lieutenant de Police*, he repreſents, that Nurſe *Favre* told him, that he had heard the Child ſhe nurſed was *a Twin*; though, among other Falſehoods, which have been taken Notice of in their Places, he adds, that ſhe told him the Brother was dead. That was the Shape originally intended for this Part of the Story. It appears further, from the Depoſition of Madame *Michel*, that Madame *Favre*, on her Return from *Dammartin*, told her, that ſhe had ſtaid with them fifteen Days---that her own Child had died there—that they preſſed her to go with them to *Rheims*; and upon her Refuſal, that they had taken for Nurſe the Wife of a Reaper found at *Dammartin*.---It is certain ſhe would alſo inform her of what was notorious at *Dammartin*, that the Child was a Twin, though Madame *Michel* has now forgot the Circumſtance.

D. P. 594. D.
P. P. 141. H.
D. P. 747.
P. P. 351. B.
—— 853. B.

The Obſervation that *Le Brun* did not viſit them at *Michel*'s deſerves no Anſwer. What ſhould bring her there? They had left her Houſe in Diſguſt. Would ſhe come to renew her Apologies for her Bugs?

In ſhort, all Argument from what Witneſſes do not remember after ſeventeen Years, is too idle. It is ſufficiently unfair to preſs what they miſremember.

Where

Where do all these Objections tend? It is sufficiently plain that Lady *Jane* gave herself out at *Michel*'s as a Woman who had been delivered of Twins, eleven Days before, and driven out of the House by Bugs. If the Imputation of a Fraud were well founded, it would follow, that she would keep it up, by dissembling Appearances conformable to the Story she had invented. It also appears that she took warm Liquors for Diet, which, as the Goblet she took them in came from the *Traiteur*'s, would likely be sent from the same Place: That she kept her Apartments remarkably close in *July*, and wore the faint Look of a very sick Woman; and that she recovered during her Stay in this House: That she presled Nurse *Favre* and her Husband, gave her high Wages, and made her and her Husband Presents of Cloaths over and above, who were Eye-Witnesses to the Whole of her Conduct at *Michel*'s, to go with them to *Rheims*. After this, how is it possible to believe, upon the Faith of any Witnesses, but particularly on the Memory of these, so worn out on one Hand, and so laboured on the other, that she acted any Part inconsistent with the Idea she gave out, and which was universally known at *Rheims*?---Those who dissemble are rarely caught in under-acting their Parts: And yet the Pursuers undertake to prove the Delivery counterfeited by Articles inconsistent with the Pretence of it.

Their Argument upon this Head is made up so that if the Conclusion, the Dissimulation of a Delivery, were admitted, it would subvert all their Means of Proof; and if their Means of Proof were allowed, they would intercept the Conclusion, and disprove every Species of Dissimulation. The very coming to the House on the eleventh Day is what might very well happen to a Woman really delivered, and actually pestered with so odious a Nuisance as Bugs; but it is the Sort of Thing which no Body who meant to dissemble would dare.

This Observation, at the same Time that it substantiates the Accounts of Lady *Jane*'s Delivery and subsequent Appearances, goes far to discuss the strange Accounts the Witnesses have been prevailed upon to give of the rest of the Incidents which are supposed to have happened there.

Considering how improbable these Accounts are, it were very much to be wished, for the Sake of Justice, that a little more Delicacy had been used in the Manner of treating the Witnesses before they were examined: For if they had not been brought together to patch up their wild Stories, and make them as consistent as possible, many more Contradictions, and still more express, must have appeared. But in the Prosecution of that fraudulent Process in the *Tournelle*, Nurse *Favre* was brought to live at *Michel*'s, at the Expence of the pretended Prosecutors, for fifteen Days; at which Time they thought it more convenient, notwithstanding, to send her back without Examination. They afterwards sent for her again, and kept her ten Days at *Michel*'s in the same Manner; and when they had led her, by Means of their false Accounts of *Michel*'s Book, into a Mistake about the Time she had kept the Child, they ventured to examine her; and *Blainville*, another of their Witnesses, was brought to *Michel*'s, to be examined by *Buhot*. But notwithstanding all this honest Precaution it will appear, that however the Witnesses have been misled into it, they have totally mistaken in their Memory of the Incidents they relate.

P. P. 854. B. —— 883. G.

CHAP. V.

Lady Jane's *pretended Journey to St.* Germain *the 21st of* July*—and the Manner of bringing the Defender to* Michel's.

—— 849. G. —— 859. D.

THE first Incident the Pursuers insist upon as repugnant to the Story told by Mrs. *Hewit* and Sir *John Stewart*, and inconsistent with so recent a Delivery, is that of the 21st of *July*, the twelfth Day, when Lady *Jane* is said to have gone to St. *Germain*'s to fetch the Child. It is still more repugnant to the Accounts of the Witnesses than to the Circumstance of so recent a Delivery, and little less repugnant to the Accounts of the Pursuers Witnesses, than of the Defender's: Those all agree to her drinking warm Liquors, and keeping her Windows close shut up, the Air being bad for lying-in Women, even when the Room was swept. It must have been at the Time Matter of great Surprize to those who observed such Circumstances, to remark also that the Lady went a Jaunt of twenty Miles the first Day of her coming there.

This Circumstance, if it were true, is far enough from disproving the Delivery: But in considering the Evidence, there seems to be no Colour of Reason to suppose it true.

—— 253. L. Decl. 9. E. Serv. p. 34. D. P. P. 254. A. —— 865. B.

Mrs. *Hewit* asserts that Sir *John* and she never went into the Country to bring either of the Children; and Sir *John* asserts, that the eldest Boy was never sent into the Country. Her Letter written at the Time, and her Deposition, runs thus: About the Time of leaving *Le Brun*'s, the eldest Boy was sent to the House of a Nurse in *Paris*, where he staid forty-eight Hours, or thereby, as Sir *John* says; as Mrs. *Hewit* says, two Days. How he was nursed before this Time has been stated before, and must be resumed hereafter, in Answer to another Objection. This sending him out happened on the 19th, the Day before they left *Le Brun*'s; as appears not only from the Testimony just mentioned; but from the Account of *Blainville* herself, who says Sir *John* came on one Day to look at the Lodging, on the next Morning came back to enquire after Bugs; and on the same Evening they all came to occupy the Lodgings, which has been shewn to be on the 20th.

Mrs.

Mrs. *Hewit* says, in her Letter of the 22d of *July*, that upon finding how well *Sholto* was nursed, they were fond of sending out the eldest; and in her Deposition, that he was sent to the House of a Woman in *Paris*. Serv. p. 34. D. P. P. 253. L.

Sir *John* and she both recollect that this *Parisian* Nurse was recommended by *Le Brun*: Mrs. *Hewit* says so expressly; and he says, by one of the Landladies: But the Context shews it must have been *Le Brun*. He was to have continued with her till a proper Nurse was got. —— 255. B.

But on the 21st Sir *John*, in visiting him, found the Nurse drunk. This Circumstance appears in Mrs. *Hewit*'s Letters, written at the Time and afterwards, and in her Deposition. Serv p. 34. D.

This alarmed him, and drove him to the Necessity of seeking another Nurse, and bringing the Child home. The Nurse provided on this Occasion came from St. *Germain*, and was dressed like a Peasant Woman. Decl. 9. P. P. P. 850. E.

The Manner in which the Child was brought to *Michel*'s, is particularly mentioned in Mrs. *Hewit*'s Letter to the Maids, 22d *July*; that on Sir *John*'s finding the Nurse drunk, he had sent the Coach for her, and that they had got a Woman to suckle him, till they should get a right Nurse.---In her Deposition of 1763, after she had been much impaired by Age and Infirmity, she says, this Milk-Woman was got by Mad. *Michel*; and that the Nurse who afterwards turned out to be bad, was hired after the Child was carried to *Michel*'s.—But the Mistake is certainly immaterial, and amounts to no more than this, That Sir *John* hired this Nurse immediately before going to *Michel*'s, which she thinks was immediately after.---All that Sir *John* remembers of the Matter is, that the Nurse to whose House the Child was sent, on leaving *Le Brun*'s, turned out to be bad; on which she was dismissed, and a Nurse got for him from St. *Germain*. Serv. p. 34. P. P. 254. B.

It is probable, however, that on the Occasion of the Woman turning out so ill, whom *Le Brun* had recommended, he would resort to her: It is also probable that he would consult her in the Choice of another; and that the Nurse who came from St. *Germain* was taken with her Approbation at least.

The *Michels*, in the Account which they give of this Transaction, say, That the very Day after their Arrival at the *Hotel D'Anjou*, they all three went to St. *Germain* for the Child; that they set out in the Morning between six and seven o'Clock, and returned that Evening or the next: And Mad. *Michel* says, that they told her over-night where they proposed to go, as they had not paid Earnest for the Lodgings. *Breval* also says, that they went to St. *Germain* eight Days after they came: Upon which it is fit to remark, —— 849. H. —— 859. D. —— 875. C.

1. That Nurse *Favre*, who is much the clearest Witness they have called, never heard of their going to St. *Germain* at all; nor did her Husband. *Blainville* says expressly, that next Day after their Entry, and for seven or eight Days, she observed Sir *John* go in and out of Lady *Jane*'s Apartment; and during this Time she never saw the Ladies; and that the Ladies never went abroad till after the Child was sent to Nurse *Favre*'s. And *Breval* puts it eight Days after their Entry; when it is admitted it could not have happened. —— 883. A. D. P. 591. E. P. P. 865. D. —— 870. G.

2. That the *Michels* doubt whether they returned that Evening; but at all Events it was but in the Evening. Now five Letters were written on that very Day, and after the Child was in the House, which absolutely refutes one Idea, and goes a great Way to discuss the other. If to this be added, the Circumstance of the Alarm the Family is supposed to have suffered from discovering that very Evening the Insufficiency of the new Nurse, the whole Story of Mad. *Michel*, whom her Husband, an infirm old Creature, follows, is not only contradictory to the Account she herself gave in 1756, but is absolutely impossible. Serv. p. 34. Pocket-book.

3. The Idea of going to St. *Germain* seems to have been derived altogether from the Circumstance of the Nurse having come from thence; and this, recollected at so great a Distance of Time, has produced the present Misrepresentation. In 1762, when the Pursuers first discovered *Michel*'s, they had no Remembrance of this pretended Journey; and said that the Nurse who was dismissed from their House, seemed to have been found by Chance in the Street: And Mrs. *Hewit* says, Sir *John* told her, he had found her in the Suburbs, or somewhere else; but where, is not positive. But when Sir *John* had said that this Nurse had come from St. *Germain*, there was no Danger of its being forgot, because the Substance of his Examination without Oath, to lie *in Retentis* (but, withal, to serve for Expiscation, and applied to commence a *French* Law-Suit), was sent over to Mr. *Andrew Stuart* in 1762. App. to Def. Mem. p. 40. P. P. 254. E.

4. The Conversation Mad. *Michel* is supposed to have had with them, is exceedingly unnatural. If she trusted to their coming there without demanding Earnest, it is not very probable that after they and their Things were in the House, any Talk should be about Earnest. It is much more likely, that she confounds this with such Conversation as might have happened when Sir *John* hired the Apartment; which he did the Day before he entered; and may have made some Apology for not giving Earnest; or what happened ten Days later, when, having hired the Apartment for a Month, some Talk might naturally arise about paying for the last entire Fortnight.

5. The Repugnancy of this is remarkable to the Account from the ſame Witneſſes, of her keeping the Room ſo cloſe, as even to give Mad. *Michel* Occaſion to think that ſhe kept her Bed during her Stay at her Houſe. P. P. 4. F.

6. Excluſive of the Improbabilities and Inconſiſtencies of this Event with the reſt of their own Story, ſurely more Credit is due to the Accounts written by Mrs. *Hewit* at the Time; which ſtand confirmed by her Depoſition, by Sir *John*'s, and the Teſtimony of *Favre* and *Blainville* themſelves; than to the ſtale and uncertain Recollection of theſe two old Witneſſes.

The Purſuers general Anſwer to Mrs. *Hewit* and Sir *John* is, that they are Accomplices. The obvious Reply to that is, That they neither are nor ever will be proved ſo. And there can be nothing more abſurd, than to make that which is to be proved, the Baſis to ſupport the Proof.

But what Inducement could Mrs. *Hewit* have to ſuppreſs, in her Letter to the Maids, the Place where the Child was nurſed? The Object which the Purſuers impute to her is, to ſuppreſs the Circumſtances of Lady *Jane*'s ſtirring out: If that were ſunk, it was very immaterial where the Child was nurſed.

CHAP. IX.

Of the pretended Jaunt to Verſailles.

THE next Incident to diſprove Lady *Jane*'s Delivery, is the Jaunt ſhe is ſuppoſed to have taken to *Verſailles*. The Purſuers, proceeding as uſual without their Witneſſes, fix this upon the 18th or 19th Day after her Delivery: Not that ſhe went upon that Day, but that ſhe muſt have gone then, or never.

There is no Reaſon upon Earth why, ordinarily ſpeaking, a Woman ſhould not have gone to *Verſailles* at that Diſtance of Time after Lying-in; conſequently, if it had been true, and Sir *John* and Mrs. *Hewit* had remembered it, there could be no Reaſon upon Earth for ſuppreſſing it; nor, on the other Hand, is there any Reaſon for inſiſting upon it, but becauſe it is either not true, or, if true, they do not remember it. This, therefore, is rather a Conteſt about the Memory of the Witneſſes than about any Thing material to the Cauſe.

At the ſame Time, it happens to be true, that Lady *Jane*, though ſhe recovered very happily, yet from being driven too early out of her firſt Lodging by Bugs, and being tired with the Change of Nurſes and the Condition of her Children, did not get Strength, or at leaſt Spirits, faſt enough to take that Journey. In Purſuance of their general Memory of her Condition, the Depoſitions of Sir *John* and Mrs. *Hewit* run, that Lady *Jane* did not go to *Verſailles*, nor even out of the Houſe, while ſhe was at *Michel*'s. In this Sir *John* and Mrs. *Hewit* are ſupported by Nurſe *Favre* and her Huſband; who ſay, that Lady *Jane* never came to ſee the Child at her Houſe, but had it always brought to her; and that they never heard of her going out till ſhe went to *Dammartin*. *Breval*, who ſaw nothing of it himſelf, though he undertakes to know their Motions by the Situation of his Shop, took it only by Report from *Blainville*. —— 883. A. D. P. 591. B.

On the other Hand, *Blainville*, a Chambermaid, ſpeaks very particularly to the Journey to *Verſailles*: But a poſitive Manner and a particular Detail are Circumſtances her Stories never want: Indeed the falſer they are, the more poſitive and particular. She would be perfectly unintelligible if the Date of her Entry to Mad. *Goury*'s Service, and of Sir *John*'s Arrival and his Departure from the *Hotel D'Anjou*, were not now unalterably fixed. —— 868. B.

In the Entry it is to be obſerved, that this buſy and ſelf-important Witneſs was firſt led through the *Tournelle* with her Story, when the Purſuers Syſtem was, that Sir *John* and Lady *Jane* arrived at *Michel*'s on the 8th of *July*, and remained there till after the 8th of *Auguſt*. If this had ſtood ſo, there would have been full Time for the whole Incidents mentioned by Mad. *Blainville*. But as this Syſtem is now abandoned by the Purſuers, and it is certain that Sir *John* and Lady *Jane* did not arrive there till the 20th; that the Child was brought to that Houſe next Day, the 21ſt; that the bad Nurſe was diſmiſſed the 22d; and that Nurſe *Favre* continued with the Child, in the *Hotel D'Anjou*, from the 22d to the 26th of *July*; during which Time there is no Pretence for Lady *Jane*'s going abroad; and that it is certain and admitted that this Mad. *Blainville* left the *Hotel D'Anjou* the 29th; there only remains two Days, the 27th and 28th, for the whole Circumſtances which paſſed betwixt her, Sir *John*, and Lady *Jane*. By keeping theſe Circumſtances in View, it will be found that her Account is abſolutely impoſſible.

Mad. *Blainville* knows nothing of the Child being brought to the Houſe; but, on the contrary, relates, with her uſual Variety of Circumſtances and Detail, how the firſt eight Days paſſed before the Child came.—All this is now confeſſedly pure Imagination. P. P. 865. C. D.

Theſe eight Days, from the 21ſt of *July*, carry her Home to Mad. *Goury*'s: But allow her to ſtrike them out of her Hiſtory, and call her back again to the 21ſt, when ſhe was deſired to examine

examine the Nurſe and the Child, her Account of what happened after ſhe ſaw the Child is impoſſible. She gives a particular Detail of her having examined the Nurſe; that ſhe had no Milk; that Sir *John*, in a violent Paſſion, inſtantly diſmiſſed her; and that at her, *Blainville*'s, earneſt Requeſt, and as it was then half an Hour paſt Ten o'Clock at Night, and the Nurſe had no Money, he gave her forty-eight Sols, and turned her out of Doors; that Nurſe *Favre* was inſtantly procured by Mad. *Michel*, who carried the Child home with her that very Night. Every Word of this is abſolutely falſe, or purely ideal. The Nurſe was not found inſufficient and diſmiſſed till next Day, the 22d, when ſhe was paid her Wages; and Nurſe *Favre* was ſpoke to by Mad. *Michel*, for the firſt Time, on the Forenoon of the 22d, and took the Care of the Child, after adviſing with her Huſband and his Brother: And inſtead of carrying home the Child, as ſo particularly mentioned by *Blainville*, ſhe remained with him at the *Hotel D'Anjou* till the 26th of *July*, or later, during which Time ſhe never ſaw nor heard of *Blainville*. P. P. 865. F.

Again, *Blainville* ſays, that the next Day after the Child was carried to Nurſe *Favre*'s, or the Day after, Lady *Jane* went to Nurſe *Favre*'s to ſee her Child, that is, on the 27th or 28th; after which, ſhe herſelf alſo went to ſee the Child, and found the Child very well, and the Nurſe very angry at Lady *Jane*, for wanting to treat the Child in the Faſhion of her Country. All this Hiſtory and theſe Viſits have no Foundation in Truth, becauſe neither ſhe nor Lady *Jane* ever ſaw the Child in Nurſe *Favre*'s, as is proved by Mad. *Favre*, her Huſband, Sir *John* and Mrs. *Hewit*, and the whole Family of *Michel*. —— 866. F.

Theſe two Days after the Child was carried to *Favre*'s bring her Hiſtory down to the 29th, the very Day on which ſhe left the Houſe. However, ſhe goes on, as uſual, with a very particular Account of what paſſed after theſe Viſits to the Child at *Favre*'s. She ſays, that after this ſhe did not ſpeak to the Gentleman or Ladies for two or three Days, in the Courſe of which ſhe was engaged to the Service of Mad. *Goury*, to which ſhe was immediately to have entered: But Sir *John* having propoſed to carry her to *Verſailles*, ſhe returned to Mad. *Goury*'s, and requeſted that ſhe would allow her eight Days, in order that ſhe might make this Journey: And that a Day or two after having obtained the Reſpite, they took Coach at the *Carouſel*, which is a Mile from *Michel*'s, and went to *Verſailles*; that is, about the 3d of *Auguſt*.—In this again ſhe is contradicted: 1ſt. By Mad. *Goury*, who has declared that ſhe entered to her Service the 29th of *July*; which was the very Day, or the Day after, ſhe was engaged; and that ſhe neither aſked nor obtained any Delay of entering after ſhe was engaged.—2dly, She is contradicted by herſelf in another Part of her Depoſition, wherein ſhe ſays very particularly, as uſual, that Sir *John* and Lady *Jane* preſſed her to go with them, and that they would carry her to *England*: To which ſhe anſwered, that ihe would willingly go, but that ſhe had two Children, whom ſhe would not abandon.—If ſhe was then, as ſhe ſays, engaged to the Service of Mad. *Goury*; and if they had offered to engage her, as ſhe alſo ſays, ſhe certainly would have given the true Reaſon for not accepting the Offer.—3dly, Lady *Jane* was not able to have walked from *Michel*'s to the *Carouſel*; and no Perſon pretends that ever ſhe went abroad on Foot. Laſtly, When this Journey is ſaid to have been made, ſhe was in the Service of Mad. *Goury*, and Lady *Jane* was gone to *Dammartin*. ——— G. ——— I. D. P. 722. A. P. P. 867. D.

She goes on, however, and ſays, that next Day or the Day after her Return from *Verſailles*, ſhe went to ſee the Squares, and gives a particular Account of the Route ſhe took and the Places ſhe ſaw; and that ſhe ſtopt at Mad. *Goury*'s to inform her that ſhe would enter to her Service next Day; and that the next Day ſhe went to ſee the Child, and then went to Mad. *Goury*'s.—All this Account too is diſtinctly contradicted by Nurſe *Favre* and her Huſband, who ſay, that Lady *Jane* never ſaw the Child in their Houſe; and the whole *Michel* People declare, that Lady *Jane* never went out with this Woman but once: And the Route ſhe deſcribes of coming from the *Place de Victoire* to the *Hotel D'Anjou* by the *Pont Tournant*, *Pont Royal*, and *Quay de Theatins*, is abſolutely impoſſible.—In Fact, Lady *Jane* was at *Dammartin* before this Excurſion is ſuppoſed to have been made.

It is very remarkable that this Journey to *Verſailles* was applied to Lady *Jane* at a Time when this Woman ſuppoſed ſhe had remained in the *Hotel D'Anjou* till the 8th of *Auguſt*; and her aſking a Leave of Abſence for eight Days from the 31ſt of *July*, when ſhe ſuppoſes Sir *John* invited her to this Party of Pleaſure, agreed exactly with the ſuppoſed Time of her Entry to Mad. *Goury*'s: But now that the Date of her Entry to Mad. *Goury* is aſcertained, and that ſhe was only two Days in the *Hotel D'Anjou* after the Child was in Nurſe *Favre*'s, the Whole is become abſolutely impoſſible.

This Account is not only impoſſible, but contradictory to what ſhe herſelf ſays, particularly of Lady *Jane*'s Situation.---She ſays, that till ſhe was called in to examine the Child ſhe never heard any Child mentioned; conſequently did not know that Lady *Jane* was ſaid to have been lately delivered.---She ſays in another Place, that ſhe and Mr. and Mad. *Breval* obſerved, that the Win- ———

dows of the Lady's Apartment were always kept ſhut; which they were not ſurpriſed at, as the Air was bad for a Perſon lately brought to-bed.---As this happened after the 22d, and ſhe left the Houſe the 29th, it is plain that theſe Obſervations upon the Windows of the Apartment were at the very Time ſhe pretends to have gone with them to *Verſailles*.

Mad. *Favre*, the Nurſe, a Witneſs much more diſtinct and accurate than any other Perſon examined to the Incidents in this Period, and who not only lived four Days in the ſame Apartment with Lady *Jane*, but was much more connected with her afterwards than any other Perſon whatever (for *Michel*'s Maid who attended them is dead) not only never heard of Lady *Jane*'s going out at all, but ſays expreſsly that after the Child was brought to her Houſe Lady *Jane* never came to ſee him. If Lady *Jane* had gone to *Verſailles* or jaunted about the Streets, this Woman muſt have heard it; and as ſhe and her Huſband ſay, that Sir *John* came every Day, and oftener twice than once, he could not have been one whole Day abſent at *Verſailles*: And if it is conſidered, that at this very Time they were ſoliciting Mad. *Favre* and her Huſband to go with them to *Rheims*, where, if ſhe did not already know, ſhe would have immediately learned that Lady *Jane* was delivered the 10th of *July*; it is impoſſible that this Journey can be true, or that any Part of Lady *Jane*'s Conduct was inconſiſtent with her having been delivered at that Time.

What Part of Mad. *Blainville*'s improbable and inconſiſtent Stories, or if any Part of them is true, it is very difficult to ſay.---It is clear there is no Part of them can be depended on; every one of them is contradicted by the Circumſtances of the Caſe and by poſitive Evidence.---Whether Lady *Jane* did ever take an Airing about the Streets before ſhe ſet out for *Dammartin*, and did take *Blainville* and her Child with her: Or whether *Blainville* went to *Verſailles* about that Time with any Body elſe then in the Houſe, which was full of Men and Women Lodgers, and confounded and miſapplied it to Lady *Jane*: Or whether ſhe choſe to give herſelf the Air of more Intimacy than ſhe really had with a *My Lord D'Angleterre*; are Matters of very little Importance, which cannot now be particularly traced.

This Journey depends entirely upon *Blainville*; for the Witneſſes who ſupport her, heard it from her at ſome Time or other: And there is ſtrong Proof that the *Michels* heard of it for the firſt Time after the Proceſs began, and *Blainville* and they were made to talk together; for the *Michels* ſaid not a Word of this when they firſt ſpoke of Lady *Jane*, which was yet too remarkable an Incident to omit, if it had been true.---But too much has been ſaid of a Circumſtance which, if it had been true, and they had remembered it, would not have been denied by Sir *John* and Mrs. *Hewit*, as it would not have added a Feather to the Scale of either Side.

CHAP. X.

Appearance of the Child at Michel's.

THE next Objection made by the Purſuers is, That the Child, however he was produced, was too old to have been born on the 10th of *July*.

A Diſproportion between the apparent Age of the Child and any Time when he might have been born, was thought, before this Proceſs began, a Circumſtance eſſentially neceſſary to raiſe a ſingle Doubt. Accordingly the firſt Step which was taken, was to report a ſhameful Falſhood, by the Means of *Buhot*, to the *Lieutenant de Police*, that Madame *Favre* had declared the Child to be three Months old when he was given to her. And in their Way of talking to Witneſſes it cannot be imagined that, after ſtating a Falſhood ſo ſolemnly, they would ſpare to propagate it in Converſation. And yet, when they come to produce their Evidence, *Michel* and his Wife, who ſaw the Child in paſſing, make no Remark on its Age. *Breval* ſaw it, and it appeared to him a Month or five Weeks old. It was nearly a Month before they left *Michel*'s. *Blainville* ſays, that he might be a Month, a Week more, or a Week leſs; for the red Colour was gone, which laſts from four to eight Days. *Favre* ſays, he might be three Weeks, or a Month; but he would not have been thought eight Days old, he was in ſo poor a Condition: But that his Navel-String was fallen off, and his Belly no longer in a Roller.

D. P. 747.

P. P. 876. c.
—— 869. f.
—— 881. c.

To both theſe Witneſſes the Change of the Colour, and Falling off of the Navel-String, was the Circumſtance in the Perſon of the Child which gave Riſe to their Conjecture about his Age. This advanced him above eight Days, his Growth did not. And when they allowed that he might have been three Weeks, or even a Month old, it was by remoter Conjecture from Traces of Memory, almoſt worn out, till they were revived upon the preſent Occaſion (and unfortunately for Truth, they were revived by a round concerted Plan of Falſhood). The Witneſſes were perſuaded to believe that ſhe had come to *Michel*'s on the 8th; and to infer conſequently, that Lady *Jane*'s own Story was falſe. They were aſſured that the Parents of *Sholto* had been diſcovered; and further, that the Children were too old for any Date, that the Circumſtances would allow for her Delivery; and they delivered ſuch Memory as they had, in Reſiſtance to theſe ſtrong Impreſ-

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ſions and confident Aſſertions. And the Wonder is, that, under ſuch Prejudices, they went no farther than three Weeks, or a Month; and were content to ſay, he might be three Weeks or a Month old; but did not appear eight Days old, except from the Want of Colour and Navel-String: But they have certainly ſaid nothing about his Age ſufficient to raiſe that Propoſition, that it was impoſſible, or in any wiſe improbable, he ſhould have been born on the 10th of *July*. On the other Hand, *Mangin*, who received him at *Dammartin*, aſcribes his real Age (a Month) to him. The Child was then very little, and ſhe, who judged from nothing but the meer Size and Appearance, did not miſtake his Age. This is the Account ſhe gave before ſhe knew the Conſequence or Effect of it: And for this the Purſuers obſerved, that ſhe had given a bad Depoſition, reſpecting the Age of the Child, in the *Tournelle*; and Mad. *Mayette* at *Rheims* calls him a Month or ſix Weeks when ſhe ſaw him, which he was. D. P. 596. B. Extrait de la Procedure extraordinaire.

The Purſuers affect to think, that the Circumſtance of the Child's not being brought with them to *Michel*'s, agrees wonderfully with the Imagination that he was ſtolen.

To ſupport this Idea they ſay, that it is admitted he was ſent to Nurſe on the 18th, without giving any Reaſon for it; and it happens not to be true, the Child was not ſent out to Nurſe till the 19th: The Reaſon given for it was, that having taken a Milk-Woman till a proper Nurſe could be got, the Woman to whoſe Houſe he was ſent was recommended as ſuch by *Le Brun*. Serv. p. 34.

Taking this for granted they argue, that if he had been their own Child, they would *doubtleſs* have brought him to *Michel*'s. They have given no Reaſon for this *doubtleſs*; and the Caſe of every Child who is ſent out to Nurſe, *i. e.* of nine Children out of ten, contradicts it.

But why would they not bring him to *Michel*'s, ſuppoſing him ſtolen? eſpecially if that would have been ſo *doubtleſs*, a Sign of his being their own. The Reaſon alledged is, Becauſe they had not prepared a Nurſe to bring with him. If their Syſtem has any Conſiſtency in it, one Part of it is, that the Child of *Mignon* was approved of the Day before it was taken away; and that the Gentleman appointed next Day for taking it. It would have been more eaſy to provide a Nurſe only, than a Nurſe and a Houſe to put it in; and either of theſe were too eaſy to admit of ſuch an Imagination as this: Not to mention that they have not yet ſettled, in the ſmalleſt Degree, when *Mignon*'s Child was carried off. Their Witneſſes ſay the 11th.

But they alledge, that Mrs. *Hewit*, in her Letter of the 22d, ſuppreſſed the bad Nurſe which had been got from St. *Germain*, for Fear it ſhould cauſe Suſpicion. Upon this Occaſion *Iſabel Walker* ceaſes to be an Accomplice, and that Letter of Mrs. *Hewit*'s is the *Fineſſe* by which ſhe is to be impoſed on. If it be remembered that Mrs. *Hewit* wrote on the 21ſt, and that the Nurſe was not changed till the 22d, it will account for no more Nurſes being mentioned; and it was at leaſt late in the Evening that the Child began to be diſordered by this Nurſe, who, though inſufficient and diſcharged for that Reaſon, was certainly not ſo in the Degree that wild Witneſs *Blainville* repreſents her, or it would have been diſcovered ſooner; and after it was diſcovered, ſhe would not have been kept another Night. But it ſounds ſtrange, to hear Mrs. *Hewit* charged with ſuppreſſing the bad Nurſe, in a Letter wherein ſhe mentions a former Nurſe to have been found drunk; and when, in a Letter of the 26th, ſhe ſpeaks of bad Nurſes, of which the very Nurſe in Queſtion was one: And from the Turn of the laſt Letter it is very clear, that ſhe referred to an intermediate one, in which ſhe gave a particular Account of that third Nurſe, who turned out bad in ſo ſhort a Time, after ſhe had deſcribed her as a fine Milk-Woman. Serv. p. 34.

CHAP. XI.

Pretended Contradictions between Sir John *and Mrs.* Hewit *in the Account of Nurſes.*

THE Purſuers have likewiſe argued, from ſuppoſed Differences in the Accounts given of the Nurſes by Sir *John*, Lady *Jane*, and Mrs. *Hewit*, that their Story had no Foundation in Truth.

There is no Argument ſo improbable as that People who concerted a Fraud ſhould give different Accounts of it. Such Differences, if they really exiſted, would more naturally infer an innocent Defect in Memory of Circumſtances, which were not thought material at the Time: And now, when the Evidence of the Nurſes has flowed in from all Quarters, it is not eaſy to imagine how Accounts, which correſpond in every Particular with that Evidence, can be miſrepreſented. Surely the Purſuers did not imagine, that the Refinement of printing the Accounts of Sir *John* and Mrs. *Hewit* in oppoſite Columns, ſo as to place what ſhe ſays of one Nurſe againſt what he ſays of another, and leaving Blanks as if there were a total Want of correſponding Accounts to others of the Nurſes, would paſs without reading the Evidence; and it is impoſſible to read the Evidence, without unravelling the ingenious Contexture of this Argument.---It would be unjuſt to the Merit of this Performance not to mention another Article in which it deſerves Praiſe; namely, tranſpoſing Sir *John*'s Depoſition, ſo as to make what he ſays of one Nurſe ſeem to relate to another. A very ſhort State of what has been ſaid by all the three will ſet this Miſapprehenſion quite right; for if there be any Room for introducing Confuſion into their Accounts, it

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must be by the Change upon the Words *Nurse* and *Milk-Women*, which are indiscriminately applied by Mrs. *Hewit* and Lady *Jane*, especially when they are speaking generally of the Hands through which the Child passed. In such Accounts it would have been a very affected Particularity to have set down so many Milk-Women, so many Nurses following them, in their own Use of two Words, which are absolutely indistinct. The Child will appear to have had five Nurses, or Milk-Women, no Matter which.

1. The first Nurse, or Milk-Woman, is spoken of no where but in the Service by Mrs. *Hewit*, who says, that Lady *Jane* had a melancholy Conceit that she should not bear a living Child, and would have no Nurse bespoken. Those Women who have not that Conceit, have frequently another, which comes to the same Thing; they will not bespeak a Nurse beforehand, because they will have the Opportunity of giving the Child the freshest Milk.—That she had bespoke no
D. P. 555. B. Nurse may be true; but it is still more certain that *La Marre* had bespoke a Nurse, the very Woman to whom *Sholto* was sent: She, however, being employed, it was the same Thing to *Archibald*, whether a Nurse had been bespoken or not; and he, according to the common Course, was fed by a Milk-Woman taken for that Purpose.

2. The second Nurse they had is mentioned both by Sir *John* and Mrs. *Hewit*, and they both
P. P. 254. A. mention her as taken about the Time of their leaving *Le Brun*'s; Mrs. *Hewit* says, as they were changing their Lodgings: She was recommended also by *Le Brun*; and of her Mrs. *Hewit* says in another Place, that she was the first Nurse. And that she must have said so in that Sense, ap-
Serv. p. 14. C. pears not only from her swearing in the Service that he was first in the Hands of a Milk-Wo-
Serv. p. 34. man; but from her Letter written at the Time, where she expressly represents, that sending this Child to Nurse was in Consequence of finding how well *Sholto* was taken Care of. During all the Time it took to make this Observation, and form this Opinion, *Archibald* was in the Hands of a Person she calls a Milk-Woman, in the Service; and upon making that Observation, they were fond of putting him also into the Hands of a Nurse, a permanent Keeper. How long this last Woman, the Nurse, had been about him before he was trusted Home with her, does not appear; but from the rest of the History it could not be long, because from thence it appears, that out of eleven Days, the Milk-Woman must have staid five or six; and he was two Days at the House of the Nurse.

3. Sir *John*, in visiting his Child, found this second Nurse drunk, and immediately brought him Home; on which Occasion it was necessary to provide a third Nurse. Sir *John* says, that the Landlady, who had carried the Child to the second Nurse, brought the Nurse and the Child to *Michel*'s; which makes it look probable, that *Le Brun* recommended the third Nurse also. Mrs. *Hewit*, in her Deposition in 1763, had confounded the Date of the Story, and supposes her to have been taken after Nurse *Favre*; and upon her Dismission Nurse *Favre* was resumed: But Nurse *Favre* never took the Child but once, and kept him till she gave him up at *Dammartin* to *Mangin*, his fifth Nurse. It should be remembered, that this is the only Mistake Mrs. *Hewit* has fallen into, which must in its Kind be innocent, and cannot be Matter of Wonder at the End of so many Years, and under so much Infirmity; and which leaves her Testimony an extraordinary Example of Correctness, when compared with the numerous and irreconcileable Errors *Blainville* and the other Witnesses for the Pursuers have fallen into. She was a Country Woman, and came from St. *Germain*; but she was found at *Paris*, the Pursuers say in the Street, *par Hazard*; Mrs. *Hewit* in the Suburbs, or somewhere, *i. e.* she did not remember where. The most probable Account, as was said before, is, that she was recommended by *Le Brun*.

She staid but one Night, being discovered to be insufficient. The Pursuers represent her as one who never had Milk. Sir *John*, who flew in a violent Passion, and abused her, has, perhaps, added another Circumstance to her Character, that she was a Thief; for Mrs. *Hewit* says, that she had the King of *France*'s Mark upon her: But as all the *French* Witnesses omit that, it is not at all likely that Mrs. *Hewit*, who, probably, could not have told, if she had been asked the Question, what the King of *France*'s Mark is, should discover that which escaped the *Michels*, and *Blainville* herself, who was the Person that examined her: Though she is sufficiently lavish in describing her as quite destitute of Milk, which looks monstrously aggravated. Considering how many Trials they are supposed to have made, the Breasts must have had the Appearance of Milk, at least; and considering that the Child was suffered to remain with her that Night, it is probable, that they did not despair of her Milk returning till the next Morning, when she was dismissed: And as Mrs. *Hewit*, on the Day before, described her as a fine Milk-Woman, it cannot be supposed she would have been taken without having the Appearance of Milk, though the Quantity of it could not be known but by Trial.

4. The fourth was Nurse *Favre*, who took him on the 22d of *July*, and kept him to the 6th or 7th of *August*. She was the Wife of a Joiner, who lived in the *Rue Serpente*, three Doors from the *Hotel D'Anjeu*: But Sir *John*, with his usual Accuracy, calls her the Wife of a *Taylor*, and Mrs. *Hewit*, who could not translate *Menuisier*, follows him. This is stated by the Pursuers; but it is not seen what they mean to infer from it.

5. The fifth is Nurſe *Mangin*, who received him from Nurſe *Favre*, and kept him till he was weaned in *April* 1749.

The Purſuers ſay, it was Affectation in Sir *John* to pretend that he had forgot the Name of the Nurſes, becauſe at the Bottom of a Note he had given Mr. *Loch* in 1759, he wrote the Words "Madame *Le Fevre*," without applying them to any Part of the Story. From this Writing in 1759, they infer, that he muſt have remembered the Names of all the Nurſes in 1763. P. P. 159. I.

The Account before given, without more Comment, explains all the Objections which ſeem at firſt Sight to ariſe from the ſtrange Tranſpoſition of their ſeveral Letters in the Columns; except that in a Letter of the 17th of *February*, Lady *Jane* ſays, he had changed three Nurſes, when, in Fact, he had changed four: And if there be an Inſtance throughout the civiliſed World, where a Court of Juſtice took ſuch an Article, falling in the current Stile of a Letter, againſt other Letters, wrote by the ſame Perſon, which mentions that he had changed four; and againſt the ſolemn Oaths of the Parties, as ſufficient to prove a deliberate Falſhood, let this be ſo taken, in Defiance of common Senſe and Experience. —— 540. C.

The 6th of *Auguſt* 1748, Sir *John* writes to Mrs. *Hepburn*, that he was under Lady *Jane*'s Eye with a fine Nurſe, having changed three.—He was with them at *Dammartin* in the Hands of *Favre*, the fourth Nurſe. Serv. p. 31 D.

The 7th of *October* 1749, Lady *Jane* writes to Lady *Mary Menzies*, that he had changed four Nurſes.—He had had five. D. P. 889. D.

Mrs. *Hewit*'s Letter of the 21ſt of *July* is cited; but it does not mention the Number of his Nurſes, only gives an Account of taking him away from the ſecond, and of the good Opinion ſhe then had of the third. Serv. p. 35.

The 26th of *July*, ſhe writes, that he has had ill Luck to his Nurſes, but has at laſt got a fine one; meaning, that his ſecond and third were bad: But his fourth, in whoſe Hands he then was, Nurſe *Favre*, ſhe commends. —— p. 35. C.

The 12th of *Auguſt* 1748, Mrs. *Hewit* writes, that he was ſo unlucky as to have had no leſs than five Nurſes. He was then in the Hand of *Mangin*, the fifth: But the Purſuers, perhaps they know why, ſay this means ſix Nurſes. There is no Language from which Cavilling may extort more different Meanings than from Mrs. *Hewit*'s; but to ſay ſhe ſpeaks of ſix Nurſes, when ſhe expreſsly confines herſelf to five, is beyond meer Cavilling. But upon this Letter the Purſuers remark, that Mrs. *Hewit* deſcribed all the Nurſes as good Milks; and obſerve, that ſhe muſt have had Something to conceal, or ſhe would not have ſuppreſſed the two bad Nurſes. About a Month before, Mrs. *Hewit* is ſuppoſed to be ſo ſharp as to correct a Date Eleven Days after writing it, in order to impoſe on the Maids. Here, after writing two Letters, which have been preſerved, (beſides thoſe loſt) in which ſhe ſpeaks of the ſecond and third Nurſes as bad, ſhe is ſuppoſed to have contradicted both induſtriouſly, by deſcribing them all as good: And this conſiſtent Way of arguing is upheld, by taking the Freedom to give Points to Mrs. *Hewit*'s Letter, who never explained herſelf that Way. The Words upon which this Meaning is put, are, "*He has* been the moſt *unlucky* poor Dear in his Nurſes no leſs has he had than "five all good Milks but baſe Jades would not come along with us for Love or Money." His Unluckineſs conſiſted in having no leſs than five in all, in ſo many Changes, the reſt of the Inconvenience was theirs, which, however, as ſhe expreſſes it, was ſimply this, That the good Milks, mentioned in Nurſe *Favre* and her Huſband's Depoſitions, and who were requeſted to go to *Rheims*, were ſuch baſe Jades, as to refuſe to come with them for Love or Money. It is ridiculouſly hard to argue from her Grammar which ſhe wants, againſt her Veracity which ſhe has, and which has never been queſtioned till now, eſpecially when the Falſhood could not be meant, as ſhe had writ the direct contrary but a Fortnight before. —— p. 36. A. Serv. p. 36. P. P. 879. B. D. P. 590. D.

Such are the Repugnancies and Contradictions they rely upon: But foreſeeing theſe would vaniſh upon Examination, the Purſuers have another Objection ready, that there is too much Conformity in their Accounts. It is extremely remarkable, they ſay, that in all their Letters there is a conſtant Repetition of the ſame, or *ſimilar* Expreſſions, concerning the Strength of one Child, and the Weakneſs of the other. It is ſomewhat difficult to conceive, how the Strength of one Child, and the Weakneſs of the other, ſhould be deſcribed at all, if they are forbidden the Uſe, not only of the ſame, but of *ſimilar* Expreſſions. It is not worth looking into the numerous Letters referred to on ſuch an Occaſion; but whoever does, will find all the Variety of Phraſe which good and bad Language can afford, only *ſimilar* in reſpect of their all deſcribing the ſame Objects.

Upon the Whole, the Evidence at *Michel*'s, perverted and tortured in every poſſible Way, muſt ſtill reſult to this; That Lady *Jane*, ſo far from having there an Appearance inconſiſtent with the Suppoſition of Delivery, ſo recent as the 10th Day of *July* preceding, ſhewed every Mark and Character which could ſerve to denote her Recovery from a recent Delivery. In ſtating which laſt Propoſition ſo largely, Reference is had, not only to what the Memory of each Wit-

neſs

neſs is now in a Condition to depoſe, but to thoſe other Appearances which appear from Circumſtances and Converſations at the Time to have been kno[illegible]——The engaging Nurſe *Favre* to go to *Rheims* proves, that Nothing which was writ to *Rh[illegible]* could, or was meant to be, concealed in the *Rue Serpente*; and that Nothing which happened in the *Rue Serpente* was meant to be concealed at *Rheims*.

Lady *Jane* had been repreſented as a Woman who came there on the eleventh Day from her Delivery of Twins, driven out of her Lodgings by Bugs: Her Habit of Life was conformable to it, with cloſe ſhut Windows, and warm Soups: The Child muſt have correſponded to the ſame Account; and no Circumſtance could have intervened, in any Degree, inconſiſtent with it. Thoſe who ſuſpect a Fraud, ſhould be the laſt to believe in ſuch Circumſtances. The Perſons who were there had the fulleſt Perſuaſion, from their perſonal Obſervation, of all the Circumſtances; and the Firmneſs of ſuch Perſuaſion was ſuch, that when they were loaded with unanſwerable Objections, they ſtill retained that Belief. How much ſtronger is that Belief, now the Objections which preſſed it at firſt are fully anſwered! The Belief which ſprung from Obſervations made at the Time, is the beſt Proof of what ought to be believed; and it is ſtrange Argument to urge the uncertain Memory they now have of particular Paſſages, againſt the certain Belief they then formed from actual Obſervation.

And the Obſervations which theſe Witneſſes made at *Paris* receive great Confirmation from what happened afterwards.——She went to *Dammartin* on the 3d of *Auguſt*, as nearly as the Evidence can ſettle the Time. On the 26th *July* Mrs. *Hewit* ſays, that ſhe was to go in eight Days, which ended on the 3d of *Auguſt*. Nurſe *Favre* ſays, that immediately after her Arrival at *Dammartin*, her own Child was taken ill, and died in four Days; he died on the 8th. The *Mabels* ſay, that ſhe ſtaid ſeven or eight Days after *Blainville*; but there has been too much Occaſion to ſee the little Reliance to be placed on their Memories. *Clavares* took their Chamber ſo early as the 31ſt of *July*; but he did not enter till ſome Days after, which correſponds to the Time of Lady *Jane*'s going.

Serv. p 35. c.
P. P. 880. d.
——330---30.
—— 858. f.
—— 852. f.

CHAP. XII.

Lady Jane's *Appearance at* Dammartin *and* Rheims.

At *Dammartin*, Sir *John* repreſents her as ſtill weak, and lying down often on the Bed. Mrs. *Hewit* ſays, in the Letter above referred to, that ſhe went by the Advice of the Doctor for Air, and to make her fit for the Journey; and Mad. *Daux* heard ſhe had come to *Dammartin* on Account of the Air. On the 12th of *Auguſt* Mrs. *Hewit* repreſents her as ſtill weak. On the 7th of *Auguſt* Lady *Jane* deſcribes herſelf in the ſame Manner to the Duke of *Douglas*. Nurſe *Favre* ſpeaks of her Recovery at *Dammartin*, to the Degree of changing her Habit of Living; ſhe began to eat and drink like the reſt. *Daux* obſerved her Appearance to be ſtill that of recovering; and that after ſome Stay at *Dammartin* ſhe appeared better. *Mangin* ſpeaks more particularly to the Progreſs of her recovering during her Stay at *Dammartin*.

Decl. 12. b.
Serv. p. 35. c.
D. P. 594. b.
Serv. p. 36. d.
P. P.* 64. *e.
P. P. 883. d.
D. P. 596. d.

To this the Purſuers object it, as an Inconſiſtence, that ſhe walked upon the Ramparts at *Dammartin*, that is to ſay, upon a Turf-walk ten Yards from the Houſe, in the Month of *Auguſt*, to ſee one of the moſt agreeable Proſpects in *France*.

At *Rheims*, it appears, from Sir *John Stewart*'s Letter of the 25th of *Auguſt*, ſhe ſtill kept to her Milk-diet. *Iſabel Walker* ſays, that ſhe uſed to lie down on the Bed once a Day; that ſhe had ſtill a pale and weakly Look; and is very explicit upon the Difference of the Appearance, extenuate and thin, from very large, as ſhe was before ſhe went to *Paris*. *Mayette* ſays, that ſhe obſerved the notable Difference in the Size of her Perſon; and that ſhe was thinner in the Face, and had a fatigued Air. Miſs *Primroſe* ſpeaks generally of the Alteration as very ſtriking, ſo that ſhe was ſcarce to be known for the ſame Woman. Mrs. *Greig*, that it was the Sort of Difference to be expected between Pregnancy and the Time after Delivery; it was what ſhe expected, upon having heard that ſhe had been brought to-bed of Twins. Baron *Macelligot* ſpeaks to her being paler than uſual, and very weak, and to the viſible Difference in her Shape and Looks, from what he had obſerved before; in a Word, to that Difference always obſervable in a Woman lately brought to-bed. Upon which the Purſuers remark, that his Obſervation relates to a Diſtance of ten Weeks after ſhe was brought to-bed, and muſt therefore be inapplicable to the Caſe of a Woman *lately* delivered.—The obvious Anſwer is in the Context of the Depoſition, where he compares her then Situation with that he had ſeen her in before, and ſays, the Difference was ſuch as is always obſerved between them.

P. P. 63. i.
D. P. 367. f.
—— 517. f.
—— 358. e.
P. P. 343. f.
D. P. 350. d.

The Correſpondence of Lady *Jane*'s Appearance in the Eyes of thoſe who had ſeen her pregnant, with what they expected to find after her Delivery of Twins, adds much to the other Application, and Strength of the Evidence of her Appearance before, in the Eyes of thoſe who had not known her in both Situations; and makes the very Propoſition ridiculous, that her ſubſequent Appearance was inconſiſtent with her ſuppoſed Delivery.

PART

PART V. BOOK I.

Evidence of the Delivery.

CHAP. I.

General Obſervations on the Evidence of the Delivery.

IT has been ſeen, that there is an Interval of four Days, *as the Purſuers ſay*, as the Witneſſes ſay of *thirteen Days*, between the 7th and the 20th of *July*, to which no Evidence applies but that of Sir *John Stewart* and Mrs. *Hewit*. They depoſe, that in this Interval Lady *Jane* was brought to-bed of Twins; and, in this, connect their Accounts with the great Multitude of Perſons who had the Opportunity to obſerve her Pregnancy gradually forming; and with thoſe who ſaw her afterwards in a Condition diſtinguiſhed from her former State of Pregnancy, in that peculiar Manner which a Delivery would naturally lead them to expect.

But the Purſuers, without the Aſſiſtance of Evidence, undertake to diſprove the Whole of their Hiſtory of thoſe thirteen Days.—For this Purpoſe they attempt to lay Hold on their Accounts of ſome particular Circumſtances; and taking it for granted, that thoſe have been erroneouſly told, they conclude that the principal Hiſtory itſelf is falſe.

In arguing thus, they ſeem to miſtake their Place in this Cauſe. As Purſuers, it is their Undertaking to evict the Defender from the Condition he is now poſſeſſed of; which muſt be done, either by ſhewing what his Condition was, before he was found in his preſent State, or, by demonſtrating, that he muſt have been in ſome other Condition, from the utter Impoſſibility of his being born in his preſent State.—If they have not ſucceeded in proving Mr. *Douglas* the Child of *Mignon*, and alſo in proving his Brother the Child of *Sanry*, they have fallen ſhort of fixing upon him any other Condition prior to that wherein he finds himſelf. If they have not proved Lady *Jane* at *Godefroi*'s and *Michel*'s, at Times, and under Circumſtances, which infer a demonſtrated Impoſſibility of her Delivery; it is altogether in vain for them to inſiſt on theſe circumſtantial Objections, which aim only at diſcrediting the Teſtimony of the Witneſſes to the Birth, without going one Step towards proving any Ground, or Propoſition, whereupon the Negative of his Birth is to be demonſtrated.

But Whoever will examine even this remoter Part of the Caſe, making ſuch Allowances as the Diſtance of Time, the Age, Infirmity of the Witneſſes, and the utter Ignorance of one of them in every Thing *French*, calls for; and ſuch as the reſt of the Evidence ſhews to be actually due to the Witneſſes in this particular Inſtance:—Whoever will attend to the Caſe made by the Evidence in this View; will ſee Reaſon to think, that inſtead of having falſified the Accounts given by Lady *Jane*, Sir *John Stewart*, and Mrs. *Hewit*, in the Circumſtantial Part, the Weight of the Evidence is in the oppoſite Scale, and proves their Accounts to have been founded in Truth, and, generally ſpeaking, correct in the Detail.

The three principal Circumſtances to which Objections are offered, are, the Houſe wherein Lady *Jane* was brought to-bed, the Man-midwife by whom ſhe was delivered, and the Nurſe who brought up *Sholto*. It will be proper to take each of theſe Objections by itſelf; but as they are all founded in ſtrained Comments upon the Perſons of the Witneſſes and the Terms of their Depoſitions, the Diſcuſſion of them will be more intelligible if ſome general Account of the Evidence is premiſed, eſpecially as that goes to all the three Circumſtances at once.

To meet all the Comments of the Purſuers, it will be neceſſary to mention the Times and Occaſions of the Converſations and Correſpondence which Sir *John*, Lady *Jane*, and Mrs. *Hewit*, held on the Subject of the Delivery, as well as the Subſtance of ſuch Converſations and Correſpondence; not imperfectly, as the Purſuers do, for the Sake of commenting upon its Deficiency, but as they actually fell out, that it may be ſeen whether they are ſuch as, conſidering the Occaſions and Circumſtances, might be expected from the Perſons who ſpoke or wrote.

CHAP. II.

Of Sir John, *Lady* Jane, *and Mrs.* Hewit's *Accounts of the Delivery, and of* Sholto *the youngeſt Child.*

IN the Letters of the 10th of *July* to Lord *Crawford*, Lady *Jane* is repreſented as in hourly Expectation of being delivered. P. P. 61. 1.

Serv. 34. A. P. P. 254. F. —— 50. L. Decl. 5. B. Serv. 14. C.

In the Afternoon of the ſame Day ſhe was accordingly delivered, in the Houſe of one *Le Brun*, by one *La Marre*, a Man-Midwife, of Twins: The eldeſt was kept ſome little Time at home, and then ſent to a Nurſe in Town: The youngeſt, who was born infirm and puny, was immediately ſent into the Country, to a Nurſe recommended by *La Marre*. The Lodging wherein Lady *Jane* found herſelf being peſtered with Bugs, which were particularly noiſome to her, ſhe removed to another Houſe, as ſoon as it was thought ſafe, which was on the tenth Day after the Delivery. It has been ſeen that the Nurſe to whom the eldeſt Child was ſent, turned out bad, and that he was brought home to them at *Michel*'s, their ſecond Lodging, on the 21ſt of *July*, the Day after they came there.

Upon this Day, the firſt Letters after the Delivery which are now extant, are Mrs. *Hewit*'s to the Maids, and Sir *John*'s to Lord *Crawford*. In the firſt Mrs. *Hewit* informs *Iſabel Walker*, that after the laſt Letter went off, Lady *Jane*, who had been ill the whole Night before, but ſo as to bear it without making Complaints, was taken, about Twelve, in ſuch a Way as ſhe was ſorry to be Witneſs to, though many, as ſhe believed, had been worſe with one, but Lady *Jane* had produced two Children. "You may believe, (ſhe proceeds) the Confuſion I have been in ſince, having no "Thought of more than one; though *Tibby Walker* was ſo much a Conjurer, as to tell me ſhe "thought ſhe was with two; but ſtill my Thoughts joined *Effy*'s." She then adds a Deſcription of the Children: "They are two lovely Creatures, but the youngeſt ſmall and weakly." And ſhe deſcribes the Nurſe to be one of the cleanlieſt beſt Women ſhe ever ſaw, a Farmer's Wife: She adds the Account which has been obſerved upon before, that upon finding the Nurſe of the youngeſt to agree, they ſent out the eldeſt alſo to nurſe in *Paris*, but were diſappointed by finding the laſt Nurſe drunk: They took him home in the Care of a Milk-Woman till they could get a right Nurſe, being determined to part with him no more.---This Milk-Woman too, upon further Trial, was found inſufficient, and one *Favre* engaged in her Place on the 22d, whoſe good Behaviour and Character induced them to allow her to carry the Child to her own Houſe about the 26th or 27th of *July*.

Serv. p. 34.

P. P. 62. E.

Sir *John* tells Lord *Crawford* of the Delivery, on the 10th, of Twins. He deſcribes the one promiſing, the other puny; but he hopes that Country Air and a good Nurſe will make him do well: "The firſt under her Eye does well, and my Lady recovers wonderfully."

Above twenty * Letters more have been preſerved, from the Time of the Delivery down to their final Departure from *Rheims*, in which they ſpeak of the Delivery, and the Condition of Lady *Jane* and the Children, from Time to Time, as the Occaſion ſeemed to call for; and it may be worth While to read them, in order to obſerve the conſtant Attention which they had to *Sholto*, as well as *Archibald*, and the natural Manner in which they make Obſervations upon little Circumſtances, which it is difficult to imagine they could invent, even for thoſe who ſee any other Reaſon to be inclined to impute to them ſo long, minute, and circumſtantial a Train of Falſhood, and Fraud: In one of them, dated *November* 1748, Sir *John* writes to his Son in *Scotland*, earneſtly ſoliciting, nay, conjuring him, by every Kind of Perſuaſion, to come over to *Rheims* and be acquainted *with his Brothers*. He there propoſes *Rheims* to him as a Place of cheap Living, where it ſhould coſt him nothing to fare as they did.

D. P. 996. E.

The Purſuers affect to inſiſt, that the Accounts which have been thus preſerved *induſtriouſly* omit the Names of the Man-Midwife, the Landladies, the Nurſe, and the Places where they lived. Whether this was induſtriouſly done, will beſt appear by going back to the Time and Occaſion of writing. It was very natural to ſend their Friends News of the Event of Lady *Jane*'s Delivery, and of her Health, and her Children, becauſe thoſe were Circumſtances which their Friends would take an Intereſt in. It would have been extraordinarily induſtrious to have added the Names

* Letter, Mrs. *Hewit* to *Iſabel Walker*, 26 *July*, 1748. - - - Serv. p. 35.
—— Sir *John Stewart* to Mrs. *Hepburn* of *Keith*, 6 *Auguſt*, - - - Serv. p. 31.
—— Lady *Jane* to the Duke of *Douglas*, 7 *Auguſt*, 1748, - - - P. P.* 63*.
—— Mrs. *Hewit* to *Iſabel Walker*, 12 *Auguſt*, 1748, - - - - Serv. p. 36.
—— Sir *John Setwart* to Lord *Haining* - - - - P. P. 63.
—— Sir *John Stewart* to Mr *Keith* - - - - - P. P. 893.
—— Sir *John* to Mad. *Tewis*, 3 *September*, 1748, - - - P. P. 67.
—— Sir *John* to Mad. *Tewis*, 6 *January*, 1749, - - - - P. P. 67.
—— Lady *Jane* to Mr. *Haldane*, 16 *September*, 1748, - - - P. P. 64.
—— Lady *Jane* to Lady *Ch. Kerr*, 19 *September*, - - - - P. P. 66.
—— Lady *Jane* to Lady *Mary Menzies*, 7 *October*, 1748 - - - D. P. 889.
—— Lady *Jane* to Lady *Mary Hamilton*, 7 *October*, 1748, - - - D. P. 983.
—— Lady *Jane* to Lady *Mary Hamilton*, 5 *June*, 1749, - - - D. P. 985.
—— Lady *Jane* to Mrs. *Hepburn*, 11 *October*, 1748. - - - - Serv. 32.
—— Mrs. *Hewit* to Mrs. *Hepburn*, 21 *December*, 1748, - - - Serv. 33.
—— Lady *Jane* to Mr. *Haldane*, 2 *December*, 1748, - - - - P. P. 540.
—— Lady *Jane* to Mr. *Haldane*, 17 *February*, 1749, - - - P. P. 540.
—— Sir *John* to his Son, now Sir *John Stewart*, 19 *September*, 1748, - - D. P. 1065.
—— Sir *John* to his Son, 11 *November*, 1748, - - - - D. P. 996.
—— Lady *Jane* to Mr. *Hamilton*, 26 *March*, 1749, - - - - Serv. p. 37.

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of Nurſes, Landladies, &c. to thoſe who would not have taken an Intereſt in ſuch Information, nor even have collected a ſingle Idea from it. For Inſtance, if Lady *Jane* had been brought to-bed at *Edinburgh*, and the Child ſent out to Nurſe in the Neighbourhood of that Place, it might have been Information, though not of a very material Sort, to *Iſabel Walker*, who was intimately acquainted with the Place and Neighbourhood, to have ſpecified the particular Places and Perſons, either referring to her Knowledge, or explaining it by Circumſtances ſhe was familiar with. But how could any ſuch Information be conveyed to her in a Place wherein ſhe had no one Trace of Knowledge or Acquaintance? And how could it be conveyed by one who had herſelf no Knowledge of Names or Places.---Thus, though they lived a Fortnight at *Michel*'s without the Imputation of Secrecy, and ten Days more at *Dammartin*, it did not occur to mention either of the Houſes or People's Names in their Letters.

And that Concealment was not their Purpoſe is exceedingly plain, from their earneſt Inſtances to Nurſe *Favre* to go along with them, which would have put an End to every Secret. P. P. 879. D. D.P. 591. B. &c.

That Madame *Favre* and all the other People they converſed with at *Paris* knew of *Sholto*, as well as of *Archibald*, is manifeſt, not only from that Circumſtance, but from this, that *Favre* told the Purſuers as ſo early as *October* 1762; and had told the ſame Thing to Madame *Daux* at *Dammartin* in the Summer 1748, while ſhe took Care of the eldeſt Child there. —— 594. D. —— 747.

This makes it plain alſo that the whole *Michel* Family muſt have heard the ſame Account, for it was not the Kind of Thing to be talked of, and ſuppreſſed at the ſame Time. And this ſhews the Abſurdity of that Argument which occurs in a thouſand Inſtances, where the Purſuers ſuppoſe the Negative to be proved of every Circumſtance, which the Memories of Witneſſes does not bear at the End of ſeventeen Years.

With what Particularity they may have converſed upon the Subjects in Queſtion at *Rheims*, can be but faintly traced in the Memories of Witneſſes who entertained no Doubts, not the leaſt, of the Birth of the Children, and heard the little Circumſtances which fell in Converſation without Impreſſion, and as Articles of ſmall Moment.

Perhaps the Name of *Le Brun* was not mentioned at all; for it is not common for People in telling where they have been, and what befel them, to be quite ſo minute as to mention the Names of the Landladies where they lodged---which make nothing to the Information of thoſe they converſe with, eſpecially if they do not happen to know the Place and the Perſons of ſuch Landladies. And if by any Accident ſuch Names are mentioned, they have but little Chance to be remembered. But *Iſabel Walker* had learned by Letters, as well as Converſations, that Lady *Jane* was delivered in the Houſe of a Widow, though ſhe does not recollect (if ſhe ever heard it) her Name; and that ſhe had a Daughter with her in Family, and that they were obliged to leave the Houſe on Account of Bugs:---And this Deſcription applies exactly to the Accounts which have been uniformly given of *Le Brun*'s, in all the ſubſequent Notes and Depoſitions. —— 367. C. Min. p. 12. A.

Upon this the Purſuers obſerve, that it was impoſſible ſhe ſhould have received any ſuch Letter, becauſe the Letter of the 21ſt was the firſt ſhe received after the Delivery, and that of the 26th the ſecond; whereas the Letter of the 26th proves, on the contrary, that *Iſabel Walker* did receive a Letter from Mrs. *Hewit* between the 21ſt and 26th. She there expreſly ſays, that ſhe wrote to *Iſabel Walker* on the Day of receiving her Letter, which was dated at *Rheims* on the 21ſt, and was therefore received at *Paris* on the 23d. And in the Letter of the 26th of *July* Mrs. *Hewit*, without recapitulating, refers her to it as a known Circumſtance, that the Milk-Woman whom they had taken home to nurſe *Archibald* had turned out bad, and been diſmiſſed.---In this Letter of the 23d Mrs. *Hewit* informed *Iſabel Walker*, not only of the Change of Lodgings, but that the Milk-Woman ſhe had haſtily commended in her Letter of the 21ſt had diſappointed them, of the Promiſe of Mr. *Andrieux*'s Supply of Money being received, and of Lady *Jane*'s being relieved of the Pain her Milk occaſioned her. Serv. p. 35.

The ſame Obſervation occurs of *Garnier*, the Nurſe of *Sholto*, an obſcure Woman in the Neighbourhood of *Paris*.---All that could be expected to make a Part of the moſt communicative Converſation, would be the Situation of the Place ſhe lived in, which would be deſcribed by its Contiguity to *Paris*, or to ſome Place nearer; and more particularly *Menilmontant*, the Town upon a Hill, at the Foot of which, and by the Road-Side, *Garnier* lived. The Name of the Road is *Chemin de Menilmontant*. Lady *Rutledge* remembers to have heard the Name of the Place, though ſhe had then forgot it, and could go no further than to be ſure it began with an *M*. Mrs. *Greig* remembers, as might be expected, to have heard Converſations on the Subject of the Delivery, and the Children, the Weakneſs of *Sholto*, and his being ſprinkled, and that he was left under the Care of a Surgeon who delivered Lady *Jane*. She does not recollect the Name of the Place, or the Addreſs to the Nurſe where he was; but ſhe remembers that Lady *Jane* begged Lady *Wigton*, when ſhe went to *Paris*, to go and ſee *Sholto*; which could not have happened without adding a particular Direction: And yet the particular Names of Places and Perſons, quite ſtrange to her, as was D. P. 610. A. P. P. 343. E.

natural, eſcaped her Memory. So Miſs *Primroſe*, who went with Lady *Wigton* to *Paris*, did not
D. P. 359. A. bear them diſtinctly in her Memory, till an Accident recalled the Name of the Place to her Memory, which will be mentioned preſently.

As Lady *Wigton* died before this Cauſe began, it cannot now be aſcertained whether ſhe did ſee *Sholto* or not. She went to *Paris* for a Complaint which confined her to the Houſe almoſt all
---- 361. C. the Time ſhe remained there; and when ſhe went abroad, it was often without Miſs *Primroſe*: So that Matter is left uncertain. But it is in full Proof, that Lord *Blantyre* did ſee him. His
Serv. p. 54. G. Lordſhip was at *Paris* from *October*, till after the 29th of *December*, 1748; and it appears from a Letter of Lord *Mark Kerr* to Lord *Crawford*, dated the 3d of *May* 1749, that Lord *Blantyre* had received a
--- 51. G. Letter from Lady *Jane*, begging his Interpoſition with the Duke; which Lord *Blantyre* gave to Lord *Mark Kerr*, ſolliciting his good Offices: And Lord *Mark Kerr* deſired Lord *Blantyre* to acquaint the Duke, that he had ſeen both the Children.---Now it is impoſſible that Lord *Mark Kerr* could have wrote thus to Lord *Crawford*, unleſs Lord *Blantyre* had told him that he had really ſeen
--- 49. G. *Sholto*. This Paſſage happened between Lord *Mark Kerr* and Lord *Blantyre* ſome Time in *April* 1749, as appears from Lord *Mark Kerr's* Letter to Lady *Jane*.

Whether *La Marre*'s Name was mentioned in their Converſations or not, muſt have been purely the Reſult of Accident: It is much the Habit with the *Scotch* and *French* to deſign People by their Profeſſion; and it is probable enough that, for the moſt Part, *La Marre* was ſo talked of:
P. P. 392. D. But it appears from an Entry in Lady *Jane*'s Pocket-Book, *September* 11, 1749, that they were in Uſe to write to *La Marre*.---This the Purſuers inſinuate, may have been inſerted ſince, though it was a Piece of Evidence introduced by themſelves, and relied upon: However, they obſerve, that Twenty-four Leaves have been cut out of it. The whole Book conſiſted of twelve Leaves of Aſſes Skin with a Leaf of Paper between each, and of a larger Number of Paper Leaves, ſubſequent to theſe. Upon the Aſs-Skin Leaves, only a Pencil could be uſed; and when they became too ſoiled to be uſed any longer, it is probable they were cut out: But all Suſpicion grows abſurd when it is conſidered, that if that Pocket-Book had been deſigned for Evidence (a very far-fetched Idea) the Entries would not have been left as they ſtand, ſo accidental, looſe, and uncircumſtantial; but, as far as the Nature of ſuch a Book admitted, would have contained Articles in regular Support of every Idea they had ſet themſelves to convey to the World.

D. P. 358. F. Beſides Miſs *Primroſe*, Mrs. *Greig*, Lady *Rutledge*, *Iſabel Walker*, and Mrs. *Hewit*, remember
—— 359. B. Letters which were ſaid to come from the Man-Midwife, and which they heard read. *Iſabel Walker*
P. P. 343. I. was frequently examined, and gained much Credit by her clear and ſatisfactory Anſwers. She told
D. P. 610. A. Mrs. *Hepburn* of *Keith*, prior to the Service in 1761, that *La Marre* was the *Accoucheur* of Lady *Jane*,
Serv. p. 12. F. which ſhe recollected by delivering to Sir *John* a Letter which came from him when they lived
D. P. 368. E. in *London*.---In the Service ſhe was aſked no Queſtions about *La Marre* or Letters from him;
—— 369. B. and therefore does not mention what ſhe had told Mrs. *Hepburn* juſt before her Examination.---
Min. p. 11. C. In her Examination in this Action ſhe was queſtioned about Letters from *La Marre*, and ſaid
P. P. 341. H. ſhe heard Sir *John* and Lady *Jane* ſpeak frequently of the Man-Midwife who had the Charge of
D P. 368. D. *Sholto*, and had brought Lady *Jane* to-bed; and that Letters came frequently from him, giving an Account of *Sholto*, and that Lady *Jane* uſed to read and explain theſe Letters to her; and that Sir *John* and Lady *Jane* were always anxious about the Child, as he was very tender.---That ſhe
Min. p. 11. C. particularly remembers that in one of theſe Letters, read at *Rheims*, *La Marre* commended *Sholto*'s Nurſe; and that they received a Letter from *La Marre* in *London*, when they lived in the Houſe of Mr. *Murray* in *St. James*'s Place, which was brought by a Friend. She was interrogated by the Court, Whether Sir *John* and Lady *Jane* had uſed to ſhew and explain her other *French* Letters? She anſwered, No; but that Lady *Jane* was exceedingly uneaſy about the Child; and ſhe had diſcovered her Anxiety in ſeeing the Concern her Miſtreſs was under; and that Lady *Jane* uſed
D. P. 610. C. to impart to her the News ſhe received of the Child.—Lady *Rutledge* mentions their Anxiety on Account of not receiving Letters with reſpect to *Sholto*; and that Sir *John* went frequently to the
Serv. 36. A. *Poſt-Office* to enquire, and, at laſt, brought one, which he read in her Preſence to Lady *Jane*: And it appears that other of their Friends at *Rheims*, with whom they converſed, as well as thoſe
—— 362. B. with whom they correſponded, had theſe Accounts of *Sholto* communicated to them.---Miſs *Primroſe* remembers particularly that ſhe heard at *Rheims*, that the Man-Midwife's Name to whom *Sholto* was committed, was *La Marre*; and that he was at Nurſe at *Menilmontant*.

Sir *John* went to ſee *Sholto* from *Dammartin*, in *Auguſt* 1748, and again from *Rheims* in *October*
D. P. 354. A. the ſame Year, at which Time he carried with him Linnens, and other Articles fit for the Child:
—— 597. D. And again, in Summer 1749, he went to *Paris* upon the ſame Errand. The ſecond Time of his
P. P. 422. F. going was with Baron *Macelligot*, which no Imagination can ſuppoſe would have happened, if
P. P.* 422. *I. there had been really no Child to ſee; for if the Baron had not been confined with Illneſs, no
D P. 595. D. Accident could have been more probably expected than an Offer to go with him to ſee the
—— 605. B. Child, which would have blown up the Impoſture.
—— 609. F.
—— 524. P.

It appears from all the Witneſſes, that they in Converſation uniformly told that *Sholto* was at
P.P. 343. H. &c. Nurſe *aux Environs*, or in the Neighbourhood of *Paris*.

Such are the Accounts which have been preſerved of *Sholto*, during the ſixteen Months he was nurſed under *Menilmontant*: At the End of this Time he was brought home, and thoſe who ſaw and knew him thereafter found him to correſpond in the exacteſt Manner with the Deſcriptions which had been given of him before.

He was of a weak and puny Habit, differing from his Brother juſt as he had been deſcribed, and, as far as that Circumſtance goes, a ſtriking Likeneſs of Lady *Jane*.---They muſt have been ſingularly fortunate if the Purſuers are right in ſuppoſing, that after finding it impoſſible to get a ſecond Child in the Year 1748, and yet hazarding to give out in Converſation another Child, which they could not get, and tying themſelves down by ſuch particular Deſcriptions, they ſhould in the Year 1749 light upon a Child of ſuitable Age, Habit, and Figure, with the additional Circumſtance, of ſtrong Reſemblance to his Mother. D. P. 501. E. —— 410. B. —— 366. F.

When they had both their Children with them, the Occaſions which continually offered of talking about the abſent Child ceaſed, and had no Chance of being renewed, till the Duke refuſed to ſee Lady *Jane*, and then would be revived only with ſuch Friends whoſe Advice and Aſſiſtance ſhe ſtood in Need of.

Of theſe Mr. *Loch* only ſurvives, and he ſpeaks to a Converſation he had with her in the Year 1752, before ſhe went to *Douglas*-Caſtle, wherein ſhe complained of the Reports in *Scotland*, which were ſpread to her Prejudice; all which turned out to be falſe, and have been traced Home to their Authors. Mr. *Loch* took Occaſion, upon this, to aſk her the Names of the Perſons who knew of her Delivery. She told him, that ſhe was brought to-bed on the 10th of *July*, at the Houſe of one Mad. *Le Brun*, *Sanbourg St. Germain* at *Paris*, *Pierre la Marre* aſſiſting as Man-Midwife at the Birth: *Le Brun* and her Daughter were preſent, and a Widow Lady who lodged in the Houſe, and Mrs. *Hewit*. Serv. p. 25. A.

On the 12th of *November*, 1753, Mr. *Loch* drew Lady *Jane*'s Will, and delivered her a Scroll of it. It never was exeeuted, and Mr. *Loch* took it back before or immediately after her Death, which happened on the 22d Day of *November*. Upon this Scroll Mr. *Loch* indorſed the following Words, *viz.*

" Archibald and Sholto Stewarts were born 10th July 1748 in Mad^e. la Brune's houſe " Sanbourg St. Germain Paris, preſent Mr. Peeter La Marr Man-Midwife, Mad^e. la Brune, her " Daughter, a Widow Lady who lodged in the houſe, and Mrs. Hellen Hewit." —— p. 45. E.

He does not recollect preciſely when this Indorſement was made; but thinks it was taken from Lady *Jane* or thoſe about her. P. P. 361.

On the 13th of *May* 1756, Sir *John* was deſired by Mrs. *Napier* to give her an Account of the Circumſtances attending Lady *Jane*'s Delivery. He told her he could not upon the Inſtant recollect diſtinctly in what Houſe the Children were born, having changed Lodgings often about that Time, and being in great Diſtreſs ſince. He wrote down ſuch Anſwers as occurred to her Queſtions in the following Form, *viz.* —— 1. —— 10. B.

" Monſieur La Marre Accoucheur
" Chez Madame Michele
" Faubourg St. Germain a Paris
" Dans le Mois de Juillet vers le
" Commencement du Mois 1748
" Monſieur & Mad^e Stewart
" logerent on Mad^e. Stewart
" Accoucha du Jumeaux
" Preſente l'Hoteſſe et ſa fille Marie
" Monſieur la Mar Accoucheur
" et Madamoiſelle Hewit."

Upon the 6th of *July* Mrs. *Napier* ſent a Copy of this Note to Lady *Fanny Stewart*, then at *Spa*, who tranſmitted it to Principal *Gordon* at *Paris*, who, upon finding out *Michel*'s, was told that Lady *Jane* had not been delivered there; but had kept her Bed ſome Time after coming to that Houſe, on Account of her being recently delivered.---This Anſwer was ſent by Lady *Fanny* from *Spa*, the 28th of *Auguſt* 1756. —— 2. A. —— 4. D. —— 6. L.

About the Time of Mrs. *Napier*'s Lying-in (5th of *Auguſt* 1756) Sir *John* came to her again, and gave her an Account of ſome other Particulars which had occurred to him. In what Method he gave them, does not appear; but the Memorandum which Mrs. *Napier* made of them is in the following Words: *viz.* —— 11. B.

" Madame la Brun fauxbourg St. Germain
" Coll fontaine Oculiſt to the Invalids
" at Paris Monſieur la Marr Valoon
" Surgeon to a Regiment Several Years."

Mrs. *Napier* put the firſt Note, among other Papers, into the Hands of Mr. *Orr*, who delivered them over to Mr. *Brown*, who produced them at the Inſtance of the Purſuers; and
P. P. 17. c. therein a Paper in the following Words:

" From Aix la Chapelle
" to Liege
" to Sedan
" to Rhetel
" to Rheims where we feared a Miſcarriage
" to Paris in the Stage Coach
" Lady Jane brought to Bed of two boys
" July 10 N. S. in Made. labrunes
" Houſe faubourg St. Germain the
" 20. removed from that buggy houſe
" to Made. Michels houſe near
" the Pont St. Michel
" then went to Damartin for
" freſh Air where Lady Jane recovered
" health and ſtrength and ſo re-
" turned to Rheims en Champagne
" where Lady Jane had a Miſcarriage
" and in about 14 Months
" after came to London
" N. B. Lady Jane in Her Paris expe-
" dition took no other Deſignation then
" Made. Stewart from the Poverty
" we were in at that time."

D. P. 429. D. —413. D. In the Year 1759, Mr. *Loch* got from Sir *John Stewart* a Note of the Circumſtances attending Lady *Jane*'s Delivery, which he gave or ſent to the Duke or Dutcheſs of *Douglas*; and is in the following Words:

P. P. 137. G.

" the Man meadwifs name who brought
" Lady Jane to bed was Mr. Peeter la Marr
" in Madam la Brun's houſe
" faubourg St. Germain Paris
" Made. la Brune her Daughter and
" Mrs. Helen Huette preſent
" with a Widow Lady who lodged in the
" ſame houſe to whom we wer much
" Oblidged Madame la fever."

The Purſuers find it for their Intereſt to confound the plain Series of theſe Facts, in order to inſiſt, that *Michel*'s was always named as the Place of Delivery, till in the End of the Year 1756, it had been diſcovered by the Enquiries of Principal *Gordon* to be falſe. After which the Name *Le Brun*'s was taken up at hazard, as the Landlady where Lady *Jane* was brought to Bed: And this Idea they contend is further ſupported by the Scroll of a Letter found among Mrs. *Hewit*'s Things
Def. Mem. p. 178. after her Death, which was deſigned for the Duke of *Douglas*, but was never ſent or finiſhed; in which Letter Mrs. *Hewit* mentions *Michel*'s as the Place of Lady *Jane*'s Delivery.

The Manner in which this Paper was produced in Proceſs deſerves to be mentioned as an Example of the Purſuers Diligence, in an Article which will appear preſently to be abſolutely of no Conſequence in the Cauſe.

Mrs. *Hewit* left one *Walter Colvil* her Executor. The Executor not being preſent, the Papers were ſealed up by the Commiſſary's Clerk. Mr. *Loch*, the Witneſs above-mentioned, applied by Petition to the Commiſſaries, as Factor for Mr. *Pringle* of *Lee*, ſuggeſting that Mrs. *Hewit* had Papers relative to the Eſtate of *Lee*.---The Petition would have been juſt as true and probable concerning any other Eſtate in his Majeſty's Dominions, Mrs. *Hewit* being equally a Stranger to them all. Upon this Petition, without even acquainting the Executor, a *general Warrant* was granted by the Commiſſaries for ſuch Inſpection. Mr. *Loch*, Mr. *Andrew Stuart*, and Mr. *Davidſon*, Agents for the Purſuers, attended the Inſpection, and took Copies of ſuch Papers as they pleaſed. This Scroll of a Letter was inſtantly printed in the Form of a Hand-bill, with this Title, " *Scroll or Copy* of " a Letter from *Helen Hewit* to the Duke of *Douglas*, aſcertaining *Michel*'s to have been the Houſe of " Delivery," and was ſent privately to the Judges; three Months after which, an Order was obtained from the Court of Seſſion for tranſmiting it into Proceſs.

It

It is needleſs to enquire with what Reſervation to the private Property of *Colvil*, this general Warrant was iſſued to rummage all his Papers in his Abſence, upon the Pretence of taking away the Papers of an Eſtate which, for Aught the Commiſſary knew, he had an Intereſt to keep out of Mr. *Loch*'s Hands; or what Right Meſſieurs *Stuart* and *Davidſon* had to take their Part in ſuch a Search.

It is equally in vain to aſk why that Paper was printed and publiſhed in ſo unauthoriſed a Manner.—It has been the uniform Courſe of Proceeding, throughout this Cauſe, for the Purſuers to publiſh falſe and partial Repreſentations of it, in order to create Prejudice; and the former Inſtances were ſtill worſe, becauſe they were done on expreſs Purpoſe to byaſs the Witneſſes before their Examination.---The Paper is now in Proceſs; and when reduced to its proper Place in the Cauſe, will be found to be of no Conſequence whatever.

Firſt, In order to maintain the Purſuers Hypotheſis, it is indiſpenſably neceſſary to ſuppoſe the above-mentioned Mr. *Loch* to have been guilty of a wilful Perjury, thus concerted:

Mr. *Loch*, at the Requeſt of Sir *John Stewart*, went in the Year 1759, to the Duke of *Douglas*; and appears by a Letter of Sir *John*'s, written at the ſame Time to the Ducheſs, to have been referred to as the Perſon who had converſed with Lady *Jane* on the Story raiſed to her Prejudice. He carried with him the Memorandum above-mentioned, written at that Time by Sir *John*. Now the Suppoſal of the Purſuers is, that he tranſcribed Sir *John*'s Note upon the Back of the Scroll of Lady *Jane*'s Teſtament, and miſtook the Word *Faubourg* in that Note, for *Sanbourg*, as it appears indorſed on the Scroll; and afterwards, in 1761, ſwore that Lady *Jane* had given him that Account ſo early as the Year 1752; and that he had indorſed it on the Scroll either from her Mouth, or ſome of the People about her, ſo early as the Year 1753. P. P. 572. E.

Whoever will take the Trouble to look at Sir *John*'s Note, will ſee that nothing is ſo impoſſible as that imaginary Blunder in tranſcribing. The Letters are exceedingly plain; the *F* diſtinctly marked, the *u* clear and open, and accordingly it has never been miſcopied by any Clerk, or got wrong into any Print; which laſt Circumſtance proves the Writing was too plain to be miſread under the Colour of a Miſtake; or the ſame Policy which induced the Purſuers to print *La Mart* inſtead of *La Marre*, *Fluralt* inſtead of *Fluratl* from *Michel*'s Police-Book, and *doux* inſtead of *deux* in Nurſe *Favre*'s Depoſition, to make wilful Miſtakes the Topicks of Argument, would doubtleſs have given *Sanbourg*, in Sir *John*'s Note, for *Faubourg*; inſtead of which, when the Proof was printed, this very Converſation with Mr. *Loch* is referred to by the Purſuers as Lady *Jane*'s firſt Explanation upon the Subject *of the Place and Witneſſes to the Delivery*.---Mr. *Loch* knew no *French* at that Time, whatever he has learnt ſince *France* was introduced into *Scotland* by this Proceſs. He probably did not know the Meaning of the Word *Faubourg*; it is much more eaſy to ſuppoſe, that he mis-heard Lady *Jane*, whom he attended in her weakeſt Moments, than that, with a plain Writing before him, he, who is a Man of Buſineſs, miſcopied it.

But Whoever will take the Trouble to compare Sir *John Stewart*'s Note with Mr. *Loch*'s Indorſement, will alſo find, that the latter is nothing like a Tranſcript from the former. *The Indorſement begins*, "Archibald *and* Sholto Stewarts *were born the* 10*th of* July 1748;" not a Word of which is in Sir *John*'s Note. Madame *Le Favre*'s Name does not appear in the Indorſement, as not being relative in Fact to the Period Lady *Jane* ſpoke of; but to a ſubſequent one. Sir *John* mentions *his being much obliged to the Widow Lady*, which, however it was in Fact, Lady *Jane* does not mention. The whole Order of the Circumſtances is alſo tranſpoſed, ſo that it could not have been a Tranſcript.

The only Points of Reſemblance are, 1ſt. That *Le Brun* is ſpelt in both *La Brune*; which proves no more, than that both thought that to be her Name, and had been uſed to pronounce it, and perhaps to write it ſo: The Miſtake is natural to all *Britiſh* Subjects. 2d. That *Pecter* is ſpelt in both with two *e*'s accommodating to the *Scottiſh* Pronunciation; for it appears from the reſt of Mr. *Loch*'s Note, that he was certainly not governed by the Spelling of the Paper he is ſuppoſed to have copied.

It is not eaſy to ſuppoſe, that Mr. *Loch* ſhould have made ſuch an Indorſement at all after the Year 1759, when he got that Note for the Ducheſs of *Douglas*, without ſuppoſing, at the ſame Time, ſome unjuſtifiable Purpoſe: And it is abſolutely impoſſible that he ſhould in the Year 1761 ſwear it to be an Indorſement of 1753, ſo ſoon after it muſt have been made, if it were copied from Sir *John*'s Note in 1759, without intending a direct Perjury.

The ſingle Queſtion therefore is, Whether Mr. *Loch* ſhall be adjudged guilty of Perjury, and in ſome Sort of Forgery, upon the Strength of theſe Arguments, drawn from the moſt immaterial of all Circumſtances? or whether it ſhall ſtand for proved, that Lady *Jane* did hold ſuch Converſation with him as he depoſes to have heard in the Year 1752, and to have written from her, or Somebody about her, on or after the 12th of *November* 1753, the Indorſement on the Back of the Teſtament?

Secondly,

Secondly, if Mr. *Loch* is held for perjured, their Hypotheſis further requires, that the Enquiries made by Principal *Gordon* ſhould have been tranſmitted to *Scotland* before Sir *John* gave in his further Accounts to Mrs *Napier*, in which *Le Brun*'s Name is mentioned.

The Letter from Lady *Fanny Stewart*, containing the Reſult of thoſe Enquiries, is dated *Spa*, *Auguſt* the 28th. It has no Poſt-Mark, ſo that it came (as Mrs. *Napier* had deſired of Lady *Fanny* it might) under Cover to her Brother, Lord *Cathcart*, and could not have been in Hand till to-
P. P. 10. 1. wards the Middle of *September*. The ſecond Converſation ſhe had with Sir *John*, *was about the Time of her Lying-in*, as ſhe depoſes; ſhe was brought to-bed on the 5th of *Auguſt*, if *about the Time of her Lying-in* is meant within a Day or two of that Time, it muſt have been before the 5th of *Auguſt*; and, whatever tolerable Latitude is given the Word, it could not mean ſix Weeks after.

Sir *John* was, at that Time, confined by his Circumſtances in a privileged Place; ſo that his Viſits could not have been frequent. Mrs. *Napier* ſays, this additional Information was given in a ſecond Converſation ſhe had with him. Now if ſhe had received thoſe Letters from *France* at that Time, or had even ſeen him after ſhe received them, it is impoſſible ſhe ſhould not have
—— 4. P. expoſtulated on the careleſs Account which had produced ſo fruitleſs an Enquiry. Again, Principal *Gordon*'s Anſwer contained, that Lady *Jane* kept her Bed at *Michel*'s. Now if Sir *John* had been told that, and had meant to falſify, neither he nor Mrs. *Hewit* would have ſaid, that Lady *Jane* did not keep her Bed at *Michel*'s on Account of the Heat. But the Truth is, Mrs. *Napier* never did communicate the Anſwers from Principal *Gordon* to Sir *John* at all; and it is impoſſible to make out a falſe Propoſition by Arguments, which, being exceedingly impoſſible, have the Appearance of being poſſible, only from the Want of one Queſtion more, to bring out the whole Truth.

Thirdly, To make Mrs. *Hewit*'s Letter fall into this Hypotheſis, it muſt be ſuppoſed that it was written before Sir *John*'s Diſcovery that *Michel*'s was not the Place (that is to ſay, before a Diſcovery which was never revealed to him), and before that Converſation which happened about the 5th of *Auguſt* 1756.

An Event, which fell out in the Spring 1755, is referred to in the Letter; ſo that the Propoſition which the Purſuers undertake to prove is, that this Letter was concerted by Sir *John* and Mrs. *Hewit*, and writ between *May* 1756, and the Time of his giving the ſecond Account to Mrs. *Napier*; whether that Account be ſuppoſed, according to the Truth, to have been given before Lady *Fanny*'s Letter arrived, or, as the Purſuers allege in the Face of all Manner of Probability, afterwards.

To maintain either Part of this Propoſition, there is not a Tittle of Evidence that it was concerted with Sir *John*, or that it was written at that Period.

For the reſt, it is in Evidence, that in the Years 1759 and 1760, the Duke of *Douglas* ſaw Mrs. *Hewit*, and often converſed with her, and expreſſed great Satisfaction with her. It has been juſt now mentioned, that in the Year 1759, Sir *John* made his Application to the Dutcheſs; and the high Probability is, that Mrs. *Hewit* deſigned this Letter, at the ſame Time, to the Duke; but being admitted to converſe with him, laid by her Purpoſe, and never thought of this Scroll more.

Fourthly, A Paper mentioned before, which appeared in the Collection of Mrs. *Napier*'s Papers, when produced by Mr. *Brown*, did not appear in the Inventory and Receit of them which Mr. *Orr* took at the Time he transferred them to Mr. *Brown*. Mr. *Orr*, truſting to the Accuracy of his Inventory, ſays it was not one of thoſe Papers; Mr. *Brown* undertakes to remember it was; Mrs. *Napier* ſays, that as ſhe lay-in, and was confined on that Account, ſhe does not remember the particular Delivery of that Note; but it is of Sir *John*'s writing, and it agrees with the Particulars they had talked over.

This Note, though it contains many more Particulars than the former, carries the Article in Queſtion no further. The Name of *Le Brun* is mentioned in both; ſo that the Queſtion, as to the Time of giving the Name of *Le Brun*, ſtill reſts on Mrs. *Napier*'s Evidence, that it was about the 5th of *Auguſt*, the Time of her Lying-in.

This Part of the Hiſtory, therefore, reſorts back to the ſimple Narrative given originally from
D. P. 367. c. the Evidence, that the Delivery was given out, as early as *July* 1748, to have happened in a Houſe infeſted with Bugs, on which Account they were obliged to quit it on the tenth Day after the Delivery; that this was therefore a totally different Houſe from *Michel*'s, and applies exactly
Serv. 25. E. to the Accounts uniformly given ſince of *Le Brun*'s; That *Le Brun*'s was mentioned as the Place of Delivery, at leaſt as early as the Year 1752, and ſo continued to be mentioned on all ſucceeding Occaſions, except two, on the firſt of which Sir *John* confounded the Names of the two Landladies he had lodged with, when upon the ſudden he gave Mrs. *Napier* the Note above-mentioned; and upon the Opportunity of another Converſation, (wherein the ſame Subject was talked over again,

and

and wherein, as Mrs. *Napier* says, he mentioned more Particulars), he spoke of *Le Brun* as the Woman at whose House Lady *Jane* was delivered; and Mrs. *Napier* immediately took a Note of it in Writing. On the second Occasion, Mrs. *Hewit*, while she was making a rough Scroll of a Letter to the Duke, wrote *Michel*'s, being the Name which then occurred; and as she found no Occasion to put it into a Letter, it remained just as in the first Moment she had put it down.

But it is wonderful how any Head, capable of a Moment's Reflection, could impute such an impossible Article of Fraud as this, or suppose that while they are said to be concerting a false Story, and giving it up to Enquiry, they should lead to the House where they actually were, and where the Enquiry, when it followed them, would immediately discover the Falsehood. To a candid Judge, that single Circumstance is enough to prove that they honestly meant to guide the Enquiry right, and that it was mere Want of Memory which put them wrong.

It would be improper to conclude this Subject without some Apology for dwelling so long on so frivolous a Topick; but it appears to have been the Ground of much Argument on a former Occasion, and for that Reason has been insisted upon here with more Particularity than it deserved or required.

The next Occasion upon which Mrs. *Hewit* was called upon to say any Thing of Lady *Jane*'s Delivery was at the Service. Before she was called in to be examined, she told Mrs. *Hepburn*, they would be asking her Names, and she remembered none of them. Upon which, *Isabel Walker* said she remembered *La Marre* was the Man who brought Lady *Jane* to-bed; and recollected a Letter which Sir *John* had received from him at *London*. Serv. 12. P. P. 341. 1.

Mrs. *Hewit* told upon the Service just what it might be expected a Person wholly unacquainted with the Language and Place she had been in might be supposed to remember: That they went from the Inn to the Lodgings where Lady *Jane* was brought to-bed: That they staid there ten Days after the Delivery, and then were obliged to leave it on Account of Bugs, and went to another House, where, after remaining some Time, they were advised to carry Lady *Jane* into the Country for more Air.—The Things which actually happened under her own Notice she could remember, and related them: The foreign Names of Places and Persons, which were strange to her, she could not recollect. In her subsequent Deposition she says, That Sir *John* had told her, previous to Lady *Jane*'s Delivery, that one *La Marre* was to attend Lady *Jane* as a Man-Midwife;---that he was a middle-sized, black, or grim Man, and lean, or thin;---and, to the best of her Knowledge, *Pierre La Marre* was a married Man; at least she thinks Sir *John* said so to her about the Time of the Delivery. Serv. p. 12. P. P. 254. 11. —255.

CHAP. III.

Of the Discovery of Mess. Menager *and* Gilles *at* Paris, *and the Accounts they gave of a Delivery performed by Monsr.* La Marre.

ABOUT a Year after the Defender's Service, Mr. *Andrew Stuart* went to *France*, to make Enquiries into the Truth of the Accounts given upon that Occasion:-- He soon discovered that one *La Marre* had practised Midwifry at *Paris*; that he was dead; and that two Surgeons of the Name of *Gilles* and *Menager* were his most intimate Acquaintances.---He conversed with them twice; once under the Porch of St. *Cosme*, and a second Time, two or three Days after, at the *Hotel de Bussy*, in the *Rue du Bussy*, where they all dined together. D. P. 534. D.

There *Menager* gave him the following Account:—That he was well acquainted with *Pierre La Marre*; his Correspondence with him began at the *Hotel Dieu*; *La Marre* was much employed in Midwifery, having attended very long in the Lying-in Ward: He taught Midwifery to People of several Nations, particularly *English* and *Irish*: He had several Houses where he brought Women to-bed; some near the *Hotel Dieu* in the Quarter of St. *André des Arts*, and some in the Quarter of St. *Honoré*.---This *La Marre* had told both him and *Gilles*, and, as he thought, *Meut*---That he had received Notice of a foreign Lady who was to come and lie-in at *Paris*; that it might be a Matter of Advantage to him; and that he would be glad *Merager* would assist him in this Delivery, which might be dangerous, considering the Age of the Lady, which was advanced. *Menager* did not attend the Delivery, but *La Marre* told him that she was brought to-bed of two male Children, and that he had assisted at the Delivery: He did not remember the Time precisely, but thought it might be sixteen or seventeen Years back, (he was sworn the 6th of *November* 1764) at the End of the Spring Time, or about the Month of *June* or *July*: *La Marre* did not tell him in what Place or at what House she was delivered:---He was angry that *Menager* did not assist at the Delivery; and it appears afterwards, that *La Marre* had given him Notice, but he was not in the Way. *La Marre* often talked of this Matter as an extraordinary Incident, in regard to the Age of the Lady. He did not tell him from what Country the Lady came, but only generally that she came from a great Way off from beyond Sea, and in the last Place from *Rheims*. He imagined that this Delivery might be in the Quarter of St. *André des Arts*, having observed often *La Marre* turn down that Way, taking —526. D. —526. E. P. P. 961. D. D. P. 527. A.

D.P. 527. F. ing the *Rue de l'Eperon*, which leads to the *Rue de Paon*. *La Marre* alſo told him, that one of her Children was truſted to his Care, and nurſed a little out of *Paris*, by *Belleville* or *Menilmontant*; and that he expected to reap great Advantage from it. *La Marre* had the Charge of many other Children, for whom he paid the Nurſes: But he talked moſt particularly of this Child of the
—— 528. A. foreign Lady, and expected great Advantage from it. *La Marre* told him, moreover, that one of the Children was weakly, which was probably, as he thought, the one left at *Paris* under his Care.
P. P. 970. G. ---That in theſe Converſations with Mr. *Stuart*, he did not ſpeak of Mad. *Le Brun*, becauſe no
—— 969. H. Queſtion was aſked him with regard to Mad. *Le Brun*.---That it was Mr. *Gilles* who firſt mentioned the Circumſtance of the Lady being delivered of Twins.---He does not remember if *Gilles* then ſaid the Delivery had happened in the Houſe of *Le Brun*, but believes that *Gilles* ſaid that the Lady had come from *Rheims*:-- So that at this Time *Gilles* and *Menager* concurred in informing Mr. *Stuart*, that *La Marre* had told them of his having delivered a foreign Lady from beyond Seas, and laſt from *Rheims*, of Male Twins; that one of them was delicate, and ſent out to Nurſe, under *La Marre*'s Care, in the Neighbourhood of *Paris*, towards *Belleville* or *Menilmontant*.---At the ſame Time *Menager* told him, he did not believe that *La Marre* had made any Journey to *Italy*, as he had not been ſo long abſent from *Paris*.

—— 970. F. Whereupon Mr. *Andrew Stuart* preferred a *Plainte* in the *Tournelle*, ſetting forth, That there was no Innkeeper of the Name of *Le Brun*; and roundly aſſerted, that *La Marre* was a Perſon *equally imaginary*:--- This was not to be wondered at in Mr. *Andrew Stuart*; but it ſerves, among other Inſtances, to prove that Truth was no Part of his Object.

When the Ducheſs of *Douglas* went over to *France*, ſhe was ill of a Cold taken in her Journey, and was attended by a Phyſician of the Name of *Bordieu*, who was Phyſician in Ordinary to the Prince *De Turenne*. He took Occaſion to tell the Prince of the Arrival of the Ducheſs, and of the Occaſion of her Journey; whereupon the Prince exclaimed, "This is extraordinary! *Menager*, "my Surgeon, told me of this Affair." *Bordieu* related what the Prince told him to Mad. *Webb*, Father *Cruikſhanks*, and Mr. *Murray*: He told it alſo to a Lady, who was with the Ducheſs in Quality of an Interpreter, in the Preſence of a Gentleman in a Sword, who appeared to be a Man of Buſineſs. At this Time he related what the Prince had told him hiſtorically: He could not upon his Examination recollect what that was, but he underſtood it was advantageous to Mr. *Douglas*, as they took a Note of the Quality of *Menager*, whom *Bordieu* repreſented as Surgeon to the Prince *De Turenne*, without being able to ſpecify his Abode; and great Emotion was diſcovered by the Lady who attended the Ducheſs as Interpreter, and by the Family in general.

—— 358. G. The Perſon about the Ducheſs, who ſerved in Quality of an Interpreter, was Miſs *Primroſe*, who had been at *Rheims* and at *Paris* with Lady *Wigton* as a Companion. She recollects the Converſation mentioned by *Bordieu*, and that one Part of it was what *Menager* told Mr. *Stuart*, that one of the Children was nurſed, under the Care of *La Marre*, by *Belleville*, or *Menilmontant*; and upon *Bordieu* mentioning the Name of *Menilmontant*, ſhe immediately recollected that to
—— 352. A. be the Name of the Place where ſhe had heard at *Rheims Sholto* was out at Nurſe.

—— 542. D. Some Days after, they complained to *Bordieu* that he had given them a falſe Direction; for that upon Enquiry at the *Hotel de Bouillon*, the Houſe of the Prince's Father, it did not appear that the Prince had any ſuch Surgeon. Whereupon *Bordieu* explained to them that *Menager* was not Surgeon to the *Hotel de Bouillon*, but to the Prince *De Turenne*, who uſed a different Surgeon from his Father: That he had heard the Converſation from *Menager* at the Prince's Country-Houſe; and he could give them no better Direction to *Menager*, than referring them to the Prince's Country-Houſe to enquire after him.

—— 528. E. *Menager* ſays, that Somebody having ſpoken to the Prince *De Turenne* about the Ducheſs of *Douglas*, and the Occaſion of her coming to *Paris*; the Prince anſwered, That Nobody was in a Condition to give better Information upon that Subject than *Menager* his Surgeon: And upon this being told to the Ducheſs he was ſent for, and gave the ſame Account to the Counſel for Mr. *Douglas*; and told them that Mr. *Gilles* had given the ſame Account to Mr. *Stuart*, and that the Widow of *La Marre* was alive, and living in *Paris*.

—— 537. E. Mr. *Duvaudier*, one of Mr. *Douglas*'s Counſel, deſired Mr. *Morand* to queſtion the Widow of *La Marre*. She told him, that *Menager* and *Gilles* were intimate with her Huſband. He aſked her, whether ſhe remembered her Huſband having delivered a Woman of Conſideration at a little Houſe which he had by the *Porcherons*, or in the *Fauxbourg* of *Montmartre*, a Place on the North-weſt Side of *Paris*: She knew Nothing of that. Upon having learnt Nothing from Mad.
—— 538. F. *La Marre*, *Duvaudier* deſired him to queſtion Mr. *Gilles* and Mr. *Menager*. Mr. *Morand* ſaid, he knew nothing of Mr. *Menager*, and not enough of Mr. *Gilles* to aſk him any Queſtions; but he would get them aſked by Mr. *Moreau*: Accordingly, the Queſtions were put down on Paper by Mr. *Morand* to be delivered to Mr. *Moreau*.

—— 534. F. Mr. *Moreau* did accordingly put the Queſtions ſo written down to Mr. *Gilles*, and received the following Anſwers from him.

1. That he knew Mr. *La Marre* was employed in Midwifery. D.P. 536. D.

2. That *La Marre* had told him, he was to bring a foreign Lady to-bed, which might make his Fortune, and that he had brought her to-bed of *Twins*.

3. That he had the Care of a Child at *Menilmontant*, but he, *Gilles*, had never ſeen it, nor been with him to ſee it: Mr. *Menager* often accompanied him thither, but never ſaw the Child, as he, *Menager*, told *Gilles*.

4. Mr. *Gilles* knows, that the Lady was brought to-bed of two Children at the Houſe of Mad. *Le Brun*, as *La Marre* told him at the Time: He does not think that the Widow *La Marre* knows any Thing of the Matter; nor does he know whether *Le Brun* is living, nor did he ever know her.

5. Mr. *Gilles* knows Mr. *Menager* as a Cotemporary at the *Hotel Dieu*, but has no particular Connection with him.

Mr. *Menager* was examined in *November* 1764, and again in *April* 1765; when he adhered diſtinctly to the Accounts he had given to Mr. *Stuart*, to the Prince of *Turenne*, firſt to the Counſel for Mr. *Douglas*, and again to Mr. *Murray* in the Prince of *Turenne*'s Preſence;---and added, that he remembered particularly he had been a Surgeon at the Army in the Year 1747, and returned to *Paris* in the End of that Campaign; and that the Delivery which *La Marre* had mentioned to him of a foreign Lady of Twins had happened after his Return from the Army---after *La Marre* and he had left the *Hotel Dieu*; but that he frequently met *La Marre* there at P. P. 969. E. this Time: It was prior to the Princeſs of *Spain*'s Marriage with the Duke of *Savoy*, which he believes happened in 1750. He further added, that he knew *La Marre* was connected with D. P. 527. C. Mad. *Le Brun*, who often came to him at the *Hotel Dieu*, and talked to him apart; from whence he, *Menager*, imagined that ſhe kept one of his Houſes for bringing Women to-bed; but that he never knew Mad. *Le Brun*, nor where ſhe lived, nor whether ſhe was married, or a Widow; but he knew that ſhe had a Daughter, who was nick-named *La Petite*, and was about eighteen or nineteen Years old at the Time he ſpeaks of; but that he had not ſeen *Le Brun*, or her Daughter, theſe twelve or fourteen Years, as he had not been in the Habit of attending the *Hotel Dieu* ſince.---That *Depots*, or Houſes which are kept, or recommended by Surgeons, for the Purpoſe of Lying-in-Women, are different from *Hotels garni*, as theſe Houſes are not ſubject to the Viſits of the *Inſpecteurs de Police*; and that Surgeons are intitled to have ſuch Houſes without being ſubject to any of the Regulations of the Police of *Paris*, which is only intended to extend to thoſe who let Lodgings publickly, or keep Inns; and that he apprehended *Le Brun*'s Houſe to be of that Kind, and that ſhe was connected with *La Marre*.

Gilles happened to be connected with *Buhot*, and employed as *Accoucheur* to his Wife. He came P. P. 970. B. to be examined in *November* 1764; he was called by the Defender, and had conſtantly told them D.P. 532. E. the ſame Story as he had to *Menager* and *Moreau*, which may eaſily be preſumed, if no Credit were due to the Veracity of his Agents from the Circumſtance of their examining him at all.---On his Examination, he was not contented to retract what he had always ſaid before; but to ſave the Trouble of palliating that Conduct, roundly denied he had ever given any other Account —— 534. E. than that which he then gave on Oath.---He does not remember that the Lady was brought to-bed of Twins, though he gave that Anſwer twice over to Mr. *Moreau*, and it was written down from his Mouth, and he was the firſt to mention it to *Menager*, *Stuart*, and *Buhot*; nor that ſhe P. P. 966. H. had been delivered at *Le Brun*'s, though that was his Anſwer as well to *Moreau* as to *Menager*, *Stuart*, and *Buhot*: He admits, however, that *La Marre* did tell him of his bringing a foreign Lady to-bed, and that he had the Care of the Child, and that ſuch Converſation was in the Years 1746, 1747, or 1748: And as a Reaſon why it was before the Year 1748, was, he had then left the *Chambre de Garde*, and the Story in which *La Marre* was; which affords very ſlight Reaſon for believing, that he could find no Opportunity afterwards to hold Converſation with *La Marre*.

CHAP. IV.

Of the Purſuers Converſations with François La Marre, *and the Widow of* Pierre La Marre.

IN *April* 1763, the Purſuers Agent had diſcovered *François*, the younger Brother of *La Marre*, living at *Montreuil ſur Mer*, the Place of his Birth, who told him, the very Mo- D.P. 746. ment he was queſtioned to it, that his Brother was acquainted with a Midwife of the Name of *Le Brun*, who lived in the *Rue de Seine*. He alſo knew her, and had often ſeen her in her Houſe, which was in the Middle of the *Rue de Seine*: That his Brother was acquainted with her at the *Hotel Dieu*, while he was a Surgeon there: That probably ſhe attended there to learn Mid-

wifery, while *La Marre* attended in the Lying-in Ward; and that perhaps he gave her Leſſons.

Upon this the Purſuers Agent aſked him, Whether ſhe had ever lived in the *Rue de Trouſſe Vache*?—He believed ſhe did; that the Midwives at *Paris* find it to their Advantage to change their Situations.—This Madame *Le Brun*, who lived in the *Rue de Trouſſe Vache*, never lived in
P. P. 527. I. the *Rue de Seine*, as her Huſband has proved; and how long the *Le Brun*, which *La Marre* was ſo intimate with, continued in the *Rue de Seine*, or to what other Street ſhe removed, is not proved by direct Evidence, but only by ſuch Probability as will be ſtated when the Purſuers Objections to her Exiſtence come to be conſidered.

D. P. 746. In the mean Time, it is fit to obſerve, that in the ſecond Converſation this *François La Marre* had with the Purſuers, he told them, that he had told the Defender every Thing as he had related it to them, except the Article with Reſpect to Mad. *Le Brun*; which is to ſay, all he did not remember, ſuppreſſing only all which he did.

P. P. 930. A. *François La Marre* came to *Paris* in the Year 1741, and left it in 1749.

Extrait de la Procedure Extraordinaire in Procès. In *January* 1764, the Purſuers appear to have converſed with the Widow of *La Marre*; and on the 8th of *January* ſhe was ſummoned, and on the 10th ſhe was examined, and depoſed before the *Tournelle*.—Mr. *D'Anjou* remarked to all that is contained in the Memorial of Mr. *Stuart*, except *the Voyage to* Italy, *whereof ſhe has ſaid Nothing*.

D. P. 743. In *July* 1763, the Defender's Agents had ſeen this Widow, and learnt from her, that ſhe had burnt ſeveral Letters, as waſte Paper, wherein the Name of *Stewart* was concerned, "*où il* "*étoit Queſtion du Nom du Stewart*;" and they had alſo inſpected her Books, in which there were divers Memorandums chiefly of what was owing to her Huſband.

The Purſuers having learnt this, for Fear that Book ſhould contain any Thing material; on the 20th of *July*, while the Complaint againſt this Proceſs depended in the Court of Seſſion, they
—Ibid. preferred a Petition to the Court of *Tournelle*, and an Order was made to ſummon her thereupon, by one *Charlier*, a *Huiſſier*, to declare to him, inſtantly, whether ſhe had any Regiſter of Deliveries, particularly in the Year 1748, or any Article therein touching the Delivery of any Woman of the Name of *Douglas* or *Stewart*, or the Sprinkling of any Child, and upon Default to be taken:—Ordering her, moreover, to bring to the *Greffe criminelle*, all her Books of Expence and Memoranda, beſides her Book of Deliveries, or to declare what is become of them; and if ſhe had parted with them, to declare upon what Motives and Terms ſhe had done ſo.

Her Anſwer was, that her Huſband was not in Uſe to keep any ſuch Book as a Book of Deliveries; that after his Death ſhe had burnt ſeveral Letters which appeared to her of no Value, wherein *il étoit Queſtion du Nom de Stewart*; and that *Antoinette Granette*, her Siſter, walking one Day with her Huſband out of *Paris*, was told by him to wait a Moment, while he went to carry Money to the Nurſe of a Child, which would one Day be the richeſt in his Kingdom.—As to her Books, ſhe ſaid, ſhe had but one, which was an Account of what was owing to her, and in the Hands of the Ducheſs of *Douglas*, which ſhe would bring the next Day; and as to the reſt, ſhe was much teazed and interrupted in her Buſineſs by the Number of Perſons who came to her on this Affair; that ſhe had loſt her Time by it, and that it was *ſa ſimple Volonté pour laquelle* ſhe had put the Book into the Ducheſs's Hands; and that ſhe dined that Day in the Ducheſs's Houſe.

D. P. 567. A. *Antoinette Granette* confirms the Story which ſhe referred to of the Walk out of *Paris*.

Extrait de la Procedure Extraordinaire. In this ſecret Court of the *Tournelle*, where *both* Parties are religiouſly kept in equal Ignorance, *D'Anjou* and his Son attended, and were ſuffered to inſult the Witneſs in a Way unknown to other Courts of Juſtice. They laboured to frighten her out of the Declaration ſhe had made to the *Huiſſier*; which, in Conformity to the ſame religious Secrecy, had been imparted to them. But ſhe perſiſted thus far, that it was ſome Name very like it, *Suard*, *Seward*, or ſome ſuch Thing.

D. P. 614. C. *Hart* depoſes, that he knew *La Marre* attending at the *Hotel Dieu* as an interiour Surgeon,
—— 616. C. and practiſing in the Lying-in Ward; that he remembers him to have been connected with *Gilles*, *Menager*, *Melet*, and *Coquerel*.

—— 540. D. *Simoneau* alſo knew *La Marre*, and was told by him, that about twelve Years before, he is not certain of the Time, but only to the Fact, *La Marre* told him, he had brought a Foreign Lady to-bed, and been well paid for it; but that good Part of the Money was gone.—He dwelt at that Time at the *Rue St. Anne*, *Butte St. Roche*.

Mr. *Petron* was long acquainted with *La Marre*, and had ſerved with him in the *Hotel Dieu*.
—— 544. He knew that *La Marre* practiſed Midwifery; was very ſkilful; and that he was of a middle
—— 545. D. Stature, and thin, and had black Eye-brows.

It is not disputed, that this *La Marre* left the *Hotel Dieu* in the Year 1747: He was married the same Year, and then lived in the *Rue St. Anne, Butte La Roche*, till his Death, which happened in *May* 1753.

CHAP. V.

Of the first Discovery of Nurse Garnier, *and the Testimony of her and her Husband, and of Mad.* Boucault.

IN Consequence of what Mr. *Menager* and *Gilles* had said of the Foreign Lady's Twin-child being put out to Nurse towards *Belleville*, or *Menilmontant*, Enquiries were made at these, and other Places in the same Neighbourhood. The Defender's Agents were informed of one Nurse *Roussélet*, who had lived at both the former Places, and had been so employed; and that she had nursed a Child which seemed to correspond with the Description given of *Sholto*: Whereupon the *Curé* of St. *Laurent*, in which Parish she then lived, was desired to put Questions to her on that Subject; upon which it turned out, that they were misinformed, and that the Child was another's. P. P. 982. D.

Roussélet was acquainted with Mad. *Garnier*, who then lived at the *Courtille*, in a House opposite to *Roussélet*'s, and who had the first Year of her coming into that Neighbourhood told her, that she had nursed a Boy who was brought to her one Evening, and who was several Times visited by two Gentlemen, who came with the Man who had brought the Child, and spoke a Language which she did not understand; but it was explained to her by the Man who had brought the Child: And that when the Child was taken away, he was carried to some distant Place, and was not to stay at *Paris*; and that the Child had been eighteen Months with her. —— 981. H.

Roussélet met Nurse *Garnier* the same Day, and told her what had passed with the *Curé*. Whereupon *Garnier* asked, Whether she did not remember a Child she had talked of several Years ago, and which she had nursed eighteen Months? Which *Roussélet* did accordingly remember, and told *Garnier*, that if she had taken good Care of the Child she had nothing to fear. But *Garnier*, apparently afraid of Something, begged *Roussélet* not to mention that she was the Nurse. —— 983. E.

Two or three Days after Mr. *de Flesselles*, *Maître des Requêtes*, sent to *Roussélet*, to ask her whether she knew any Body who had nursed a *Scottish* Child. She answered, that she knew a Woman who had nursed a Child, which she believed was a Foreigner, because the Gentlemen who came to see the Child spoke in a Language which the Woman *Garnier* did not understand; and the Person who brought the Child explained what they said. But she added, that *Garnier* wished not to be discovered.---Mr. *de Flesselles* told her she had nothing to fear, and she must bring her to him. —— 983. H.

She went to *Garnier* that Day, who refused to go to Mr. *de Flesselles*. She assured her that she had nothing to fear, provided she spoke the Truth. But *Garnier* would not go.

Mr. *de Flesselles* sent to *Roussélet* the next Day to bring *Garnier* with her. —— 984. C.

The Day after she prevailed with *Garnier* to go along with her to Mr. *de Flesselles*, who put many Questions to her about the foreign Child she had nursed. *Roussélet* remembers that she talked of *Pierre La Marre*, but does not recollect whether she mentioned the Circumstance of the Child's being a Twin. They were sent together to Mr. *Duvaudier*, who put Questions to her on the Subject of the Child, and found her Answers exact and to the Purpose.—*Garnier* gives the same Account of her going to Mr. *de Flesselles* and to Mr. *Duvaudier*'s.

The Circumstances deposed to by her are, that she was engaged by Mr. *La Marre*, who, in looking out for a Nurse, saw her pass by with her Child; and going into a Publick-house, called the *Grand Louis*, asked the Master of it, one *Laurent*, whether he could have her for a Nurse. *Laurent*'s Servant was sent to seek her, and brought her to *La Marre*, who went over to look at her Child, and engaged her: And this was four Days before the Child was brought. D. P. 554. S. —— 555. B.

She does not remember on what Day the Child was brought; but it was in the Evening, in a Coach, by *La Marre*, and an elderly Woman who sat in the Coach, while *La Marre* delivered him, and whom she only saw through the Door as she lighted out *La Marre*.---She nursed him at the Rate of ten Crowns thirty Livres a Month. —— 555. K.

She observed to *La Marre*, that the Child was extraordinarily weak. On which he answered, that it was no Wonder, as he was a Twin: That the Twins were Males: That he was a new-born Child, plaintive and so delicate, that she did not reckon upon rearing him; but he recovered by degrees, by Means of extraordinary Care. She continued to suckle her own Child for some Days after she received the Child, but *La Marre* obliged her to wean him. Whereupon he was sent to *Belleville*, where he remained for two Weeks, when he was brought home; and upon —— 554. C. P. P. 976. F. —— 974. H.

upon *La Marre*'s obſerving her Child in the Houſe, he was angry, and thought ſhe ſtill continued to ſuckle her own Child. Whereupon ſhe offered her Child the Breaſt, which he would
D. P. 554. D. not take; which ſatisfied *La Marre* that he was weaned. *La Marre* came and ſent often to ſee
— 555. D. him, but ſhe never carried the Child to his Houſe. She went once to call on him, when the Child was ſick. She does not remember preciſely where *La Marre* lived, but it was at *Butte St. Roche*; and he had left his Addreſs in caſe the Child ſhould be ill. She did not find *La Marre* at home, but left Word with a Perſon who looked like a Servant, who ſhe ſaw at the Door, (ſhe knows not whether he was a Servant or not) that ſhe wanted to ſee him at the *Haute-borne*; and
— 555. F. *La Marre* came accordingly three or four Hours after to ſee the Child. No Woman came from *La Marre* to ſee the Child, but he came alone; and it was he who ſupplied the Child with
— 556. D. Cloaths when he was put into a Robe. She remembers that two Gentlemen came to ſee the
— 554. B. Child twice; one of whom ſhe took to be the Father, from his earneſtly recommending it to
— 554. F. her to take great Care of the Child. The two Gentlemen ſpoke *French*, but with a foreign Accent; and there was a third who explained what ſhe ſaid, as they did not underſtand her.---(It is difficult for a Foreigner to underſtand the ordinary People in *France*.) She did not know whether
— 554. D. the Child belonged to People of Rank; but that *La Marre* always told her, if ſhe would rear the Child, ſhe ſhould be rewarded for it. She knew neither the Parents nor their Name, nor
— 557. B. the Name of the Child; but *La Marre* never told her there was any Secret in the Affair, or that
— 554. D. ſhe ought not to name him. She took it for a foreign Child, becauſe the Child-bed Linen and Cloaths were not of the Faſhion of her Country, but quilted in the *Engliſh* Manner, and ornamented with *Dentelle D'Angleterre* (which is the Name of *Bruſſels* Lace). She made her Obſer-
P. P. 976. B. vation to *La Marre*, that the Cloaths were not in the *French* Faſhion; and he told her they were in the *Engliſh* Faſhion.

Dr P. 557. F. It was thirteen or fourteen Months after ſhe received him that he was weaned.

— 556. F.
— 554. E. The Child had not the Small-Pox while with her, nor any other Mark.

— 554. F. She does not remember when ſhe gave him up, but it was in the Afternoon; and they told her at taking him away not to be concerned, for he was not to be placed elſewhere, nor to ſtay any longer at *Paris*, but to go to ſome diſtant Place.

— 558. B. *Nicholas Garnier* ſupports his Wife in every Circumſtance, as far as his Habit of Living enabled him to atteſt. He was not at home when the Child was brought; but he remembers that his Wife told him that *La Marre*, a Man-Midwife, had brought it, together with a Woman. His Employment was generally without Doors all the Day, which he obſerves as the Reaſon why he
— 558. C. did not ſee the Viſits which were made the Child by *La Marre*; but ſays, his Wife told him he often came there; and that *La Marre* told his Wife that the Child was a Twin. And he remembers to have heard from his Wife, that two foreign Gentlemen came twice or thrice to ſee him. He obſerved, that it was a new-born Child, very weak, very ſmall, and very delicate. He heard from his Wife, that *La Marre* charged her to take great Care of the Child, for ſhe did not know whom ſhe nurſed. He never knew from whence the Child came, but, from his Linen, judged him to be a Child of Condition.---He was very fair, but he does not remember his Eyes or Feature.

— 560. D. Madame *Boucault*, a Neighbour of Madame *Garnier*, ſays, that *Garnier* had told her at the Time, that four or five Days before ſhe had the Child, two Gentlemen paſſed her, and obſerved her Child, and aſked whether ſhe would undertake to nurſe a Child, when a Lady they ſpoke of ſhould be brought to-bed, and they made her at the ſame Time undreſs the Child: She agreed, if her Huſband would, who did accordingly conſent. That a Day or two after the Gentlemen came back,
— 560. F. made the Bargain with her, and gave her ſix Livres Advance; and agreed for thirty Livres a Month in Place of forty Livres, which ſhe demanded, ſaying they were limited as to the Sum; and that four or five Days after, two Gentlemen, or Perſons, came in the Evening with Flambeaux to bring the Child; and ſhe, *Boucalt*, ſaw it the next Day.

— 560. B. *Boucault* was at *Garnier*'s one Afternoon when *La Marre* was there, and obſerved to him, that the Child was very plaintive; upon which he anſwered, that where there were two, they were not commonly ſo ſtrong as when there was only one. *La Marre* recommended it to her to take great Care of the Child, and ſend for him if it ailed any Thing: And upon her aſking where ſhe ſhould find him, he gave her his Addreſs, which ſhe ſaw him write; and it was either at *Butte St. Roche*, or *L'Egout Montmartre*: And ſhe has a Notion, that in writing his Name he made the Word *Pierre* without adding his Quality (in Fact he was not privileged) which Madame *Garnier* got read to her when ſhe had Occaſion to go to him on Account of the Child's Ailment; but Madame *Garnier* never told her of her going more than once to *La Marre*.

— 561. A. M. *La Marre* paid the Months, and ſhe remembers to have been preſent on one Occaſion when he paid it; and to have aſked him in Joke if he would give as much to every Body: To which *La Marre* anſwered, he would pay her as much if he owed it. *La Marre* uſed to ſend three or four
— 561. E. Times a Week, and to come very often himſelf.---He ſhewed great Attention to the Child, and
— 562. E. made

made her ſend off her Son *Jerome* into the Neighbourhood, ſaying that one Calf was enough for one Cow. She never knew the Father or Mother of the Child, but ſhe has heard *La Marre* tell *Garnier* to take great Care of it; for ſhe did not know whom ſhe nurſed. She ſaw the Nurſe and the Child every Day, and obſerved, when it was dreſſed, that it had fine Laces which were not of the *Pariſian* Faſhion. Its Child-bed Linen were quilted in the *Engliſh* Faſhion, and doubled over the Breaſt in a Way ſhe cannot exactly deſcribe; and ſhe took it to be the *Engliſh* Faſhion, becauſe they were not in the *French* Faſhion; and thoſe who ſaw it told her it was in the Faſhion of *England*. D. P. 561. C. —— 561. B. D.

She remembers Gentlemen coming to ſee it from Time to Time; and once in particular was coming in upon them, but upon ſeeing them ſhe retired. When ſhe ſaw *Garnier* next, ſhe told her ſhe had received a grand Viſit: *Garnier* anſwered, they were Gentlemen who came to ſee the Child; that ſhe knew not whether the Father was one, but they did not ſpeak *French* as it is ſpoken at *Paris*; and though ſhe did not underſtand them, ſhe anſwered them yes and no.---At another Time, ſhe ſaw a Gentleman walk alone with *Garnier* in the *Marais* oppoſite to her Houſe. He was tall and handſome, and appeared to be about fifty. —— 561. E.

Nurſe *Garnier* kept the Child ſixteen or ſeventeen Months, and then he walked with the Help of Leading-Strings. —— 561. E.

Brigot, who was Servant to M. *Laurent* at the Sign of the *Grand Louis*, remembers one *La Marre*'s frequenting that Inn. —— 568. B.

Such is the Evidence which has been diſcovered in Support of the uniform Account given by Sir *John*, Lady *Jane*, and Mrs *Hewit*, that Lady *Jane* was delivered by *La Marre*, in the Houſe of *Le Brun*, and that *Sholto* was nurſed in the Neighbourhood of *Paris*.

CHAP. VII.

Obſervations on the Purſuers Attempt to diſprove the Circumſtances attending the Delivery.

THE Purſuers have undertaken to prove the Falſehood of theſe four Propoſitions, 1. That *La Marre* was Man-midwife to Lady *Jane*. 2. That *Le Brun*'s was the Houſe of her Delivery. 3. That *Garnier* nurſed *Sholto*. 4. That ſhe was brought to-bed on the 10th of *July*; which are the four moſt leading Circumſtances in the Hiſtory of the Birth of her two Children.

If they have ſucceeded in this, the firſt Conſequence is, that the Evidence is quite ſilent on the Subject of the Birth: The ſecond, that the Parents, and many other Witneſſes, have been induced to invent Falſehoods to make out that Hiſtory.

The firſt Conſequence falls intirely upon the Purſuers; for if perchance the Evidence has been quite ſilent on this Subject, his Condition muſt remain after the Proceſs, as it did before, unaffected by the Proof, and conſequently unaltered.

The ſecond Conſequence would go to throw much Suſpicion on the Truth of all his Witneſſes, even of thoſe who muſt know the true State of his Condition.---It would diſarm him of ſo much Evidence in his Defence, and for ſo much leave the Field open to his Enemies.---But even this, though diſadvantageous enough, would not undo him, unleſs the Purſuers could proceed and eſtabliſh, by direct Evidence, ſome Article abſolutely incompatible with his Birth, as alledged.

It has been already ſeen, that there are thirteen Days to which no Evidence of theirs applies; and it is confidently hoped, that when their Proof, as they affect to call it, of the ſeveral Falſehoods which they alledge, comes to be examined, it will appear ſatisfactorily, that not one of the Circumſtances mentioned turn out to be falſe.---On the contrary, they are eſtabliſhed by a Concurrence and Clearneſs of Teſtimony, far greater than could be expected of ſuch Circumſtances, at ſuch Diſtance of Time.

Their Objections conſiſt, for the moſt Part, of Comments upon Phraſes, to force them out of the Senſe which the Speaker and the Context put upon them; in ſtrained Conſtructions upon little Incidents, ſuch as Nobody thought worth explaining while the Evidence was given; or ſuch as the Memory could not ſpeak preciſely to, for Want of any original Importance in ſuch Articles to ſtrike the Attention.

And where their Objections ſeem to take a fairer Foundation, if they related to material Articles, they will be found to raiſe no Inferences which go to the Truth of the Story, or in any Degree affect the Body of Evidence on which that depends.

The firſt Article to which they impute Falſhood is, that *La Marre* was the Man-midwife, who brought Lady *Jane* to-bed.

Though

Though this is ſwore by two direct Witneſſes, and ſupported with the Concurrence of many others circumſtantial, in the Manner which has been mentioned; the whole Queſtion of the Truth of this Article ſtands not upon any Attempt to prove that there was no Perſon of that Name practiſing at that Time, in that Profeſſion; or that it was impoſſible ſuch Perſon ſhould have been the Man-midwife, but upon imaginary Improbabilities, ariſing from total Miſrepreſentation of the Facts, or ſuch Criticiſms as have been alluded to before.

They have indeed uſed ſome little Endeavours to diſtinguiſh the Name; but they are ſuch as they don't ſeem much to rely upon.

For the reſt, the Objections ſeem to be, that *La Marre* was not in ſuch Rank or Eſtimation as to make it probable he ſhould have fallen under Sir *John*'s Notice.

That the Circumſtances whereby the *French* Evidence coincides with the *Engliſh*, in applying the Delivery to *La Marre*, are not ſufficiently proved: In which they ſeem to allow, what in Truth no Thanks are due to them for admitting, that if thoſe Circumſtances are ſufficiently proved, the Application raiſed by them is irrefragable.

That the Forgery, as they are pleaſed to call it, by Sir *John*, of thoſe four Letters they have brought into Proceſs, indicates, that there was no Perſon of that Name who ſtood in that Relation to the Family, and from whom real Letters could have been procured.

That Sir *John* deſcribed *La Marre*, in his judicial Declaration, by Circumſtances which do not comport with him, and which, if true, prove ſome other Perſon than the only *La Marre* known of, to have been the Man-midwife. If falſe, as they ſeem to think them, they concur with the Forgery to indicate that Sir *John* knew no ſuch Man as *La Marre*, the *Accoucheur* of Lady *Jane*.

Theſe ſhall be examined in their Order.

CHAP. VIII.

Difference in the Name betwixt the Pierre La Marre *mentioned by Sir* John, *and the Perſon mentioned by the Witneſſes.*

Cond. p. 1. c. IT is no ſmall Proof of the Opinion (if that be worth having) which the Purſuers entertained of the Application and Force of the Evidence mentioned before, that they have laboured, at the Beginning of this Cauſe, to create a Difference, and ſince to find one, in the Name of *La Marre*.

The Purſuers called him *La Mart* in the Condeſcendence and the reſt of the *Scotch* Papers, publiſhed before the Evidence was taken, to create a Belief that the Names were totally different; and take their Chance for its being ſet right afterwards: But not to provoke that Chance, they leave it without a Comment: And though Mr. *Andrew Stuart* calls him *La Mart* in his Oath before the Court of Seſſion in 1764, it fully appears now that he certainly never heard him called ſo by any one Perſon who talked of him: And at this very Time he had a Certificate of his Privilege from St. *Coſme* in his Pocket, wherein he is called *La Marre*.

D. P. 533. F. —— 528. D.

After the Evidence was examined, they reſorted to another Argument of Difference, ariſing from Sir *John* and Lady *Jane*'s calling him *Pierre La Marre*, without adding the other Chriſtian Name *Louis*; and from their and Mrs. *Hewit*'s omitting the Word *De*.

As to the firſt, the Name of *Louis*, it appears that ſeveral of his moſt intimate Acquaintances knew him by the Name of *Pierre* only, and did not know him by that of *Louis*: Nay, when one of their Commiſſioners put the Name of *Louis Pierre* into the Mouth of *Simoneau*, the Witneſs corrected him, upon his reading over the Depoſition, and ſaid, that though he is announced in the Beginning of the Depoſition *Louis*, he (the Witneſs) never knew him by the Name of *Louis*, but believes he was called *Pierre*. Even his Siſter-in-law, who lived in the Houſe with him, only ſays, ſhe *believes* his Name was *Louis Pierre*; and *Potron*, under whom he practiſed at the *Hotel Dieu*, ſays, he knew him by the Name of *Pierre*, but did not know he had any other Name.—*Gilles* ſays he knew *Pierre La Marre*, Surgeon:—*Hart* mentions him as *La Marre* only; and *Coequerel* calls him *Pierre La Marre* in many different Places of his Depoſition.

—— 546. B. —— 541. D. —— 567. F. —— 532. F. —— 614. D. —— 578. B. —— 579. F, &c.

Without this Particularity in the Evidence, it would have been ſufficiently obvious, that Perſons with a Multitude of Names, which the *French*, even to the loweſt of them, appear from the *Extraites baptiſtaires* to affect, would not, at leaſt ordinarily, uſe more than one.

As to the ſecond, the *De*, it is an Addition which *French* Families very frequently give themſelves from Vanity, when it is no Part of their Names; and when they are ſpoken of, it is no leſs frequently omitted: *La Marre* is generally mentioned without the *De* throughout all the Depoſitions; and it is remarkable, that in the Purſuers Condeſcendence he is ſtiled *La Mart*, without the *De*; which

P. P. 30. C.

which ſhews they had uſually not heard the *De* prefixed to his Name: And in his Privilege, recorded at St. *Coſme*, he is alſo ſtiled *La Marre*. D. P. 723. C.

Theſe ſmall Criticiſms will go no Way to eſtabliſh a Difference between the Perſon called *Pierre La Marre* by Sir *John*, Lady *Jane*, and Mrs. *Hewit*, and him who was commonly called ſo in *Paris*; though on ſolemn Occaſions he may ſometimes have been deſigned *Louis Pierre de La Marre*.

The frivolous Affectation of writing *De la-Marre* in one Word, inſtead of leaving it as they found it, or *La Marre*, is not worth a Comment.

CHAP. IX.

La Marre *was ſkilful in his Practice as Accoucheur; and the Accouchement mentioned by* Menager, *&c. was not anterior to* 1748.

IT is inſiſted by the Purſuers, that *La Marre* was not in a Rank or Eſtimation fit to be employed in the Delivery of Lady *Jane*; nay, they go ſo far as to deny that his Application was to Midwifery in particular; or that he had any extraordinary Skill in that Branch; and cite his Book, as Proof that he never delivered more than three Women in his Life.

It appears upon the Evidence, that he was Apprentice to one *Mengond*, a Surgeon, for five Years: —— 526. D.
That he attended the *Hotel Dieu* eight Years longer: That his Attendance was altogether in the Ly- —— 533. B.
ing-in Ward, as appears from the concurrent Teſtimony of *Gilles*, (if that deſerves Attention) *Me-* P. P. 936. G.
nager, *Melet*, and *Hart*. D. P. 614. D.

That he had acquired conſiderable Skill in that Branch of his Profeſſion, appears from the Evi- —— 545. A.
dence of *Potron*.—*La Marre* had been called in to deliver a Woman in the *Quinze Vingt*, an Hoſpital for blind People: It proved a preternatural Caſe, and he called in *Potron* to aſſiſt him, who obſerved that he conducted himſelf like a Man exceedingly well informed, and with great Addreſs, *très entendu & fort habile dans ſon Art:* This was *before* the Year 1745, when he had been about ſix Years attending the Lying-in Ward of the *Hotel Dieu:* And *Potron* was himſelf of great Eminence in the ſame Branch.

Gilles confeſſes, that from his long Attendance in the above-mentioned Ward, he was much ac- —— 533. B.
quainted with the Midwives, and was often called in by them.

Menager ſays, that he had practiſed long in the Lying-in Ward: That he had ſeveral Houſes —— 528. A.
for delivering Women, both before and after he left the *Hotel Dieu:* That he has been in one of —— 527. B.
the Houſes himſelf, where he alſo gave Lectures upon the Art of Midwifery: That he taught va- —— 529. B.
rious Pupils, particularly *Iriſh* and *Engliſh*.

Pagnon ſays, that he knew *La Marre* applied to Midwifery, but knew nothing of the par- P. P. 945. F.
ticular Deliveries he had performed.

Melet ſpeaks of *La Marre* as employed in that Branch, though he never knew of his teaching the —— 939. B.
Art. And *François La Marre* his Brother has ſaid, that he believed his Brother taught the Mad. *Le* D. P. 745.
Brun he knew the Art of Midwifery at the *Hotel Dieu*.

The whole Objection made by the Purſuers to his Experience, Skill, and Practice in the Branch P. P. 934. B.
of Midwifery reſts on *Mengond*'s ſaying, that while he was his Apprentice, that is, before he went to the *Hotel Dieu*, where he learnt that Branch of his Art, he never delivered any Woman, nor attended him in any Delivery; and that he did not afterwards know or hear that *La Marre* was concerned in Deliveries, but applied to Surgery in general: And if he means that he did not confine himſelf to that Practice, there is no Witneſs who proves that he did: But it is ſufficiently plain that he had prepared himſelf expreſsly for that Practice, and engaged in it as far as his Opportunities offered; and he was underſtood by thoſe that knew him to have made that Article his Object and Aim.

It is further inſiſted, that he muſt have practiſed it in an inferior Way, not then being a Maſter Surgeon, or Privileged. He practiſed it, however, and, according to the Purſuers own Account, was ſufficiently known in that Sort to be the Deliverer of a Lady who came from ſome Province to be brought to-bed; which was done in a Maſk, ſeveral Years before 1748. But the Obſervation proceeds on no Foundation: It requires great Length of Time to gain Freedoms by Attendance at the *Hotel Dieu*, which few People are in Circumſtances to employ only in the Study, without reſorting to Practice, tho' it is not ſtrictly legal. *Gilles* appears to have been there fourteen or fifteen Years before he proceeded Maſter, and *Simoneau* longer; and from the Evidence of *Hart* it appears, D. P. 533. E. —— 540 C.
that he, under the ſame Circumſtances as *La Marre*, gave publick Lectures upon the Art of —— 615. D.
Midwifery, and had a Houſe where he brought poor People to-bed, in order to aſſiſt his Lectures with the View of the Practice. The publick Manner in which he kept this School, and the Num-

ber of his Pupils, which were twenty or twenty-five, gave Offence, and was taken Notice of, and he left *Paris* for ſome Time; but upon his Return, though he was ſtill under the ſame Circumſtances, he was called in by Midwives to bring Women to-bed.

The Attempt to define the Number of *La Marre*'s Deliveries to be preciſely three, is bottomed ſimply on the Falſehood of calling his Book an Account of his Practice, which imports to be no ſuch Thing. It is a Book in which are all Sorts of Memoranda, without Order, without regular Dates; and ſuppoſing it to be an Account at all, is to fix the Imputation of Perjury on all the Witneſſes on both Sides.

It is an Event not at all wonderful, that a Man in this Situation, of this Character, and of ſuch Skill as the Witneſs *Potron*, who had ſeen him practiſe, deſcribes, ſhould be recommended to Sir *John*.

Sir *John*'s chief, indeed the only Reſort which is now remembered, when he came firſt to *Paris*, in the Year 1748, was to *Pelletier*'s Coffee-houſe. He took much Liking to *Pelletier*, becauſe he played at Cheſs; and *La Marre* went to the ſame Coffee-houſe. Who alſo reſorted there, at this Diſtance of Time, is unknown; for *Pelletier* himſelf is dead, and his Wife was at that Time a mere Girl of eighteen. They were but juſt married, and ſhe cannot recollect who frequented the Coffee-houſe: But if one is led by Probability to ſuppoſe that *Pelletier*, *Fontaine*, or others who frequented the ſame Coffee-houſe, and who knew *La Marre*, mentioned him to Sir *John*, it would follow that they ſpoke of him in the Character which he affected of a Man-Midwife, in which he was of Courſe moſt known, and in which it appears from *Potron* he was eminent.

P. P. 590. D. Decl. 7. F.

The next Objection made by the Purſuers is, That it does not ſquare in Point of Time with Lady *Jane*'s Delivery, which was in Summer 1748; whereas the Delivery *talked of* by *La Marre* was in 1746.

It has been ſeen before, by all the Witneſſes, that the foreign Child which *La Marre* put out to Nurſe at *Garnier*'s, immediately after it was born, was in the Year 1748. That the Child appears to have been the Fruit of the Delivery he *talked of*, is proved by Mr. *Menager*, who remembers that one of the Twins was ſent under *La Marre*'s Charge *vers Menilmontant*; and the Time of his delivering the foreign Lady, and having the Child under his Charge, is fixed by *Granette* and *Simoncau* to have been ſubſequent to his Marriage; and by *Garnier*, *Boucault*, &c. &c. to have been in 1748.

D P. 567. A. D. —— 540. E. —— 554. B. —— 558. B. —— 560. B. P. P. 531.—13.

The Converſation itſelf is fixed by *Menager* to have been in 1748. He returned from the Army at the End of the Campaign 1747; and he remembers the Paſſage in Queſtion happened in the End of the Spring, or Beginning of Summer, about the Month of *June* or *July*.

—— 969. E.

The whole Contradiction alledged to all theſe Witneſſes comes out thus: Mr. *Gilles* heard *La Marre* ſay in the *Chambre de Garde*, two or three Times, that he had brought to-bed a foreign Lady of Diſtinction, of whoſe Child he had the Charge; and this muſt have been in the Years 1746, 1747, or 1748. The Queſtion is, Which of theſe three Years, whether that which ſuits the reſt of the Evidence, ſhall be adopted, or that which does not? The Purſuers take the laſt, on the Authority of this *Gilles*, who argues, that it was before the Year 1748; becauſe in that Year he was not in the ſame Chamber or Floor with *La Marre*.—If his Memory had not failed him, he might have added, nor in the ſame Houſe; for *La Marre* had left the *Hotel Dieu* at this Time. But what hinders, that though his Eſtabliſhment was no longer in the *Hotel Dieu*, he ſhould reſort there to ſee his Friends, and to be preſent at particular Operations in Surgery. *Menager*, *Melet*, and *Cocquerel*, all prove, that, in Fact, he did reſort there in that Manner.

D. P. 532. G. P. P. 937. C. —— 965. E. D. P. 580. A.

—— 533. D.

But *Gilles* undertakes to remember negatively againſt thoſe poſitive Witneſſes, that he never ſaw him in the *Chambre de Garde*, or any where elſe, above five or ſix Times, after he left the Hoſpital; that it was while they both lodged in the *Chambre de Garde* he heard the Account of the foreign Lady. The laſt is, in Truth, a neceſſary Conſequence, if he were right in the firſt; but a Negative depoſed by an honeſt Witneſs of ſuch a Circumſtance, after ſeventeen Years, would deſerve no Attention againſt ſuch a Multitude of other Witneſſes tying the Time down; much leſs Title has it to Credit from Mr. *Gilles*, who is affected in the Manner mentioned before with ſuch direct Perjury: And it is very certain that *Gilles*, when firſt ſpoke with by *Andrew Stuart* on this Subject, did not pretend that it happened prior to the Year 1748; otherwiſe they would not in their *Plaintes* have attempted to diſconnect *La Marre* with the Delivery of Lady *Jane*, only becauſe he had not been in *Italy*, and becauſe his Name was *La Mart*, as they then falſely alledged.

Melet ſays, that at a Collation in the *Chambre de Garde*, on a *Saturday* Night, he heard *La Marre* ſpeak of a Delivery which would be profitable to him.

P. P. 936. F.

The Purſuers take it for granted this muſt be the ſame Converſation, and upon the ſame Subject as that mentioned by *Menager* and *Gilles*; and then argue on the reſt of *Melet*'s Evidence, that he, *La Marre*, *Gilles*, and *Menager*, were never together *in any Houſe* after *La Marre* left the *Hotel Dieu*;

Dieu; and that after he, *La Marre*, and *Menager*, had left the *Chambre de Garde*, which was in the Year 1747, they were never all together there at one Time, nor did he hear *La Marre* ſpeak of any Delivery.

What does all this import? Either that *Melet* has forgot ſome ſuch Circumſtances, as any Man may eaſily be ſuppoſed not to have remembered, or that he never heard *La Marre* ſpeak of this Delivery at all, which will not prove that he never performed it, nor even contradict *Menager*, who ſays that, *as he thinks*, he has heard *La Marre* ſpeak of it in Preſence of *Melet*.

So *Cocquerel* heard it ſaid, while they were together in the *Chambre de Garde*, that he had an *Affair* which would be of Advantage to him.---This the Purſuers argue was the Delivery in Queſtion, and conſequently before the proper Time. D. P. 579. A.

But whether he remembers the Period right or not, ſeems to be of no Importance, as *the Affair of Advantage* is rather too general an Account to be applied to this particular Tranſaction.

What Affairs of Advantage, or Deliveries of Advantage, may have happened to *La Marre*, it is impoſſible to particularize now. The only two Deliveries which are handed down in the Memory of the Witneſſes, promiſing to be diſtinguiſhed as *Affairs*, are that in the *Quartier St. Honoré*, of the *Provincial Lady*, at which *Menager* aſſiſted before he went to the Army, and that which he believes to have been in the *Quartier St. André des Arts*; but does not know, as he did not aſſiſt at it: And which laſt happened after his Return from the Army, in the Months of *June* or *July* 1748.

CHAP. X.

The Objections to Mr. Menager.

IT is further objected, That the Circumſtances which apply this Story to Lady *Jane* are not ſufficiently proved, becauſe they depend upon the Evidence of *Menager* only, who is a ſingle Witneſs and perjured.

It looks well for the Defender, that the Purſuers feel themſelves preſſed by the Evidence as it ſtands, to labour, for ſo many Pages together, in forming a ſcurrilous Charge againſt a Man who deſerves Credit and Reſpect, not only from his general Character, but from the unvaried Conſiſtencies which he maintained through two very long minute and cavalling Examinations. At the ſame Time *Menager*'s Teſtimony is not ſingle. *Simoneau* depoſes, that *La Marre* told him he had delivered a foreign Lady: And that this happened when he, *La Marre*, lived in the Street St. *Ann*; which *La Marre* did not do, till after his Marriage. And the Purſuers can beſt tell under what Inducement *Gilles*, after repeating the ſame Story, over and over, down to the very Day of his Examination, was prevailed upon then to ſwear, that he had always told the ſame Story, and no other than he then ſwore. —— 540. B. —— 536. B.

But why is *Menager* called a ſingle Witneſs, when he refers ſo peremptorily, as he does, to the Converſations with *Buhot* and *Stuart*, which would have been produced along with many other Matters equally foreign to the Exhibition demanded, if they had been different: And when, upon the Report of *Menager* of what *Gilles* had ſaid in that Converſation, Queſtions were put by Mr. *Moreau*, which he anſwered in preciſely the ſame Manner as *Menager* had reported —— 528. D. P. P. 969. G. D. P. 536. D.

The Purſuers ſay this is an unfair Proceeding, and that they could have ſurrounded *Menager*'s Evidence in the ſame Manner.---Singular Forbearance in thoſe who have built above half their Argument upon Hearſay of other Witneſſes; ſuch as that of Mrs. *Margaret Primroſe*, which differs from Mr. *Moreau*'s only in reſpect of being proved a direct Falſhood. The Purſuers took quite another Courſe in applying to the ſame Witneſſes, and converſed with them perſonally, without the Interpoſition of any Man of Character. And if others by Accident had heard *Menager*'s Account, it is plain the only Reaſon why they were not produced, is, becauſe they muſt have confirmed him, or been in Danger of Detection in their Perjury; for they have not done their Duty, if, knowing how to convict the Defender's Witneſs of Falſhood, they have forbore it. P. P. 68. G.

Again, Why is *Menager* called a ſingle Witneſs, when it is remembered in what Manner he is ſurrounded by Support? Not only the Converſation above-mentioned, which happened long before the Defender's Agents came to *Paris*, but an accidental Converſation with the Prince *Turenne*, which was communicated by him to *Bordieu*, and by him to the Ducheſs of *Douglas*, ſupport him on one Side; on the other, the perfect Conformity of the Circumſtances attending *Sholto* and Nurſe *Garnier* confirm him. D. P. 541. I.

Yet the Purſuers, leaving the reſt of the Witneſſes quite unimpeached, content themſelves with a virulent, though but a cavalling, Attack on his Credit, which cannot fall as long as that of the other Witneſſes remains entire.

D. P. 67. B. 1. The firſt Objection to Mr. *Menager* is, That he ſays *La Marre* told him, that he was beſpoke to deliver a foreign Lady, " qui devoit venir à *Paris* pour accoucher." This conveys as if he had been beſpoke before the Lady's Arrival at *Paris*; and in another Part of *Menager*'s Depoſition he appears to have underſtood it in the ſame Way: Whereas, in Truth, it ſeems more probable from the Evidence, that he was beſpoke after the Lady's Arrival at *Paris* than before, againſt which Probability the Purſuers adhere to the literal Senſe of thoſe Words as underſtood by *Menager*.

If *La Marre*, when he was firſt beſpoke, did not collect exactly whether the Lady was newly arrived or coming to *Paris*, this would occaſion the ſmall Difference here cavilled on. If *Menager* took ſome other *general* Word to mean *Paris*, and underſtood *La Marre* ſo, while he was informing him that the Lady was to come to a Houſe, recommended by him; or perhaps *either* alluding to the Quarter where the Converſation happened to be, ſpeaking of *Paris*, that might alſo account for the ſmall Difference; or if, in the Courſe of ſo many Years, he has remembered a Converſation wrong, which he underſtood otherwiſe at the Time, that will account for ſuch a Difference in the Relation made by a Man who is ſupported by the Concurrence of ſo many Circumſtances which were diſcovered long after he told the Story.

P. P. 962. G. 2. The Purſuers hang upon another Part of his Evidence, and affect to inſiſt that he was beſpoke in *March* or *April*, becauſe *Menager*, profeſſing not to remember the Time, conjectures thoſe Months as the Time about which he believed it might be, as if the reſt of the Evidence were not fully ſufficient to diſperſe ſuch Criticiſms.

3. This Delivery appears to have been profitable to *La Marre*, whereas the Defenders Counſel argued the Cheapneſs as the only Excuſe for taking him; and Sir *John* himſelf alledged the ſame Pretence.---The firſt *whereas* happens to be meerly falſe; the ſecond will be accounted for when that Caſe comes under Examination.

4. That it does not apply in Point of Time to *Menager*'s Story is an Objection which, if it had Foundation, would go to the reſt of this Story, and to all the other Witneſſes; for which Reaſon it has been conſidered before.

D. P. 529. E. 5. *Menager* ſuppoſed the Lady to be forty-eight, which was intended to accommodate to the Caſe of Lady *Jane*. *La Marre* told him the Lady was of an advanced Age, and gave that as the Reaſon for deſiring his Aſſiſtance: And *Menager* muſt have ſpoken from his own Recollections, or elſe the Ideas *La Marre* gave him of the Age might have allowed him to mention any advanced Time of Life; and one nearer to Lady *Jane*'s real Age.

—— 527. D. 6. It is alſo objected to him, that he conjectured the Quarter in which the foreign Lady was brought to-bed was in the *Quartier de St. André des Arts*, which was invented, becauſe he knew Lady *Jane* was ſaid to be delivered in the *Fauxbourg St. Germain.*—*Menager* has given his Reaſon for this Conjecture; That he knew *La Marre* had Houſes in that Quarter.

—— 550. E. 7. He alone makes *La Marre* Surgeon to a Regiment, and he is one more than aſſerts any ſuch Thing: He *believed* that *La Marre* had been appointed Surgeon to the Regiment *de la Couronne*, but that he never joined it; a Circumſtance which is totally immaterial.—The Purſuers ſuppoſe this was to accommodate to Sir *John*'s Story: Now if he had ſeen Sir *John*'s Account, which he certainly had not, for it was not emitted when he firſt gave his Account, he would have found the Taſk by much too great for ſuch ſmall Circumſtances as thoſe to bring them together. It was no more than uncertain Memory which he had of ſuch a Thing, without even affecting Knowlege of it.

8. Mr. *Menager* deſcribes *La Marre* as a Surgeon of great Practice, and a Profeſſor of Midwifery: This is ſo far removed from the Truth, that it is not worth ſaying more than has been ſaid of it already, where the Accounts which *Menager* really gave of him are well confirmed by *Potron* and others.

P. P. 966. C. 9. The next Objection to *Menager* is, that to accommodate his Account to the four Letters, which were never held out for real, he ſwore, that he had ſeen *La Marre* ſign his Name ſometimes with the baptiſmal Name of *Pierre*, writ at full Length, ſometimes with *P* only.

That *Menager* knew of *La Marre's* Letters is a direct Falſhood, which they have made no Attempt to prove: That he was Fool enough to think that Circumſtance alone would ſet them up, is alſo ſuppoſed, on as little Foundation.—That proving him to have writ *Pierre* when he ſigned at Length, would help a Signature of *Peir* and *Pier*, is what no Man could be weak enough to think.—The Conſequence is, that he ſpoke from what he had actually ſeen.

—— 1000. C. The Objections are, firſt, that it is not uſual to ſign ſo in *France*, and the Inſtances of the *Maillefer* Family conſiſting of five Brothers is cited, none of whom wrote their baptiſmal Names.—They took their Diſtinctions from their Wives Lands, as *Forzy*, *Cocqueber*, *&c.* but in the Caſe of

of ſmall People, who have no other Diſtinction but their Names, it ſeems to be abſolutely neceſſary. The Uſage in *France* to ſign otherwiſe, if it be only frequent, concludes Nothing, and no Witneſs attempts to carry it further.—*Sebaſtian Fochat*, a Surgeon, a Witneſs in the preſent Proceſs, ſigns *S. Fochat*. *Louis Antoine Loret*, an Officer of Police, ſigns with all his Names. *Margueret Michel* is ſigned at Length; *Ch. Godefroi* abbreviated; and there are a Number of other Inſtances in the Proof: But without going further into the Queſtion of more or leſs Uſe, while there are ſuch Diſtinctions as Chriſtian Names, they will be uſed for the only Purpoſe they can ſerve.—His Brothers likewiſe are called to prove, that his Letters, not one of which are produced, were ſigned *De La Marre*, and that his Marriage-contract is ſo ſigned; but how does this eſtabliſh that he never ſigned otherwiſe? A Propoſition which yet is neceſſary to fix upon *Menager* a wilful Falſhood in an Article, which is, as it muſt needs appear to every Body, perfectly immaterial. D. P. 167. A. —— 236. C. P. P. 119. I. —— 111. A. —— 100. K.

10. *Menager* fixed the Time to accommodate it to the Story of Sir *John*.---It has been ſeen already, what a great Body of Evidence concurs to fix the Time in the ſame Manner; and it ill becomes them to labour at imputing what they know to be falſe, by having had the Advantage of converſing with him, and of hearing the ſame Things before the Proceſs began; not to add, that *Menager*'s general Character intitled him to look down with Diſdain upon ſuch wretched Attempts to diſcredit him.

11. This perſonal Argument againſt *Menager* ſtoops ſo low, as to alledge it for an Article of Falſhood, that he reports himſelf to have walked with *La Marre* in the *Luxembourg* Gardens, and more often in the *Thuilleries*, as *La Marre* lived nearer to the laſt Place.—This Falſhood they ſay, was concerted to accommodate with Sir *John*'s Story; and the only Reaſon for calling it ſo is, becauſe it does ſo accommodate: If they have no better Reaſon for calling it falſe, it may be uſeful hereafter, when that Matter is under Conſideration. —— 967. E.

12. *Menager*'s Story is inconſiſtent, becauſe he did not know the Houſe where Lady *Jane* was. But it ſeems to afford ſome Solution of this Inconſiſtency, that *La Marre* called for him, and not finding him at Home, left Word with his Father where to follow him: But as *Menager* did not like ſuch Operations, his Father did not inform him.—As *Menager* was not beſpoke by *La Marre* to attend Lady *Jane*, but in Caſe ſuch Aſſiſtance ſhould prove neceſſary, no Occaſion aroſe from thence to notify the Houſe where ſhe was delivered; it was enough that *La Marre* knew where to ſend: And the little Diſguſt *La Marre* expreſſed was at his neglecting the Time and being out of the Way, without leaving an Addreſs behind him where he might be ſent for; to which the Anſwer, ſuggeſted by the Purſuers, that he did not know where to come, would not have applied:—Nor is it true, that the Invitation was to ſatisfy his Curioſity, it was to afford Aſſiſtance in Caſe it had been wanted. The Embarraſſments which the Purſuers think moſt obſervable are: 1. That *Menager* gives, as his Reaſon for not being there, that he was out of the Way. 2. That he repreſents *La Marre* to have *ſent* for him; and then recollecting himſelf in the next Sentence, adds, that he believed *La Marre* came himſelf. —— 961. D.

13. The Objections begin to run ſo low, that it is fit only to mention them. He met the Woman *De La Marre* at the Ducheſs of *Douglas*'s Houſe, and yet there was no Converſation upon the Subject of the Law-Suit, which the Purſuers don't know how to believe; and it is no Wonder that they do not: But as they are not to judge this Suit, ſuch an Objection deſerves no further Notice.—That Mr. *Murray*, when he told him the Story, liſtened to it with great Attention, but did not enter into a Detail of the Circumſtances with him, is incredible with the Purſuers, for the ſame Reaſon; a Reaſon which will make it incredible with Nobody elſe.—That he believes it was the Agent for the Purſuers, who told him of *Le Brun*'s being gone into *Brittany*; and that he had not Curioſity enough to read the Papers in this Cauſe; an Accident very likely to befall theſe Papers in the Hands of all thoſe who are under no Neceſſity to read them.

14. That *Menager* ſaid it was *Bagieu* who recommended him to the *Comte D'Argenſon* to be his Surgeon; whereas *Bagieu* ſays, He did not.—What earthly Inducement ſhould tempt him to ſwear falſe on ſuch a Subject? To give himſelf Importance, ſay the Purſuers; as if the being Surgeon to the *Comte*, which is admitted, was not a more conſiderable Circumſtance than the Name of the Perſon who recommended him, if he had been more eminent than *Bagieu*. But Words are thrown away upon ſuch a Topic of Calumny. —— 960. C. —— 945. H.

Such are the Objections to *Menager*; a Man whoſe perſonal Credit, though as good as any Man's at *Paris*, is the leaſt Part of the Support to the Truth of his Story, which finds additional Support in many other Witneſſes; and what is ſtill ſtronger, in many other Circumſtances, which were not known at the Time he told it; and when diſcovered, fell in with it, and eſtabliſhed the Truth of it.

The

P. P. 930. E. D. P. 746. The next Objection which occurs to the Truth of this Story is, 1. That the Delivery was not imparted by *La Marre* to *François La Marre*, his Brother.---It is impoſſible to diſcover whether he did this or not; for, after *François La Marre* told Mr. *Stuart* of his Brother's intimate Connection with *Le Brun*,---he was prevailed on to deny it upon his Oath; therefore —— 578. F. he is no Witneſs to that or any other Point: Not to mention, if it were neceſſary, that it is in Evidence there was a Difference between the Brothers. 2. He never told it to another Brother who lived at *Montreuil*. 3. Nor to his Wife, who was examined by the *Tournelle Huiſſier*, —— 567. D. and to whom it is in Evidence, he mentioned none of his Practice. 4. Nor to Mr. and Madame *Beaujeu*; to which might be added, with equal Propriety and Face of Argument, the P. P. 941. E. Names of all the other Inhabitants of the *Rue St. Honoré*.---*Beaujeu*, a Grocer, ſays, moreover, he was a ſad Midwife; he bungled in delivering the blind Man's Wife, as *La Marre* told him in D P. 545. C. Confidence. *Petron*, one of the firſt Men-Midwives in *Paris*, differs from Mr. *Beaujeu* the Grocer, in his Opinion of that Delivery; and *La Marre*'s repreſenting himſelf as a Bungler would want P. P. 941. E. Credit much, if Mr. *Beaujeu* had not ſworn that he employed him to deliver his own Wife.

CHAP. XI.

Of the Entry in Lady Jane's *Pocket-Book.*

AFTER having expreſſed their Satisfaction in the clear and ingenious Manner abovementioned, and pronounced upon ſuch Foundations (with what Reſpect to Decency is ſubmitted) that *Menager* has been convicted of groſs Falſhoods and wilful Perjury, they ſtill find —— 392. D. themſelves gravelled with an Entry in Lady *Jane*'s Pocket-Book, which proves a Correſpondence with *La Marre* as early as the 11th of *September* 1749; and this was a Piece of Evidence which they forced out of the Defender's Hands, and which they rely upon in other Inſtances.

To this they make ſix Anſwers:

1. That the *La Marre* there mentioned *may* mean ſome other than him at *Paris*, or ſome other at *Paris* than the Man-Midwife.---To be ſure there is nothing againſt that powerful Argument, *It may be*, but this, that they have uniformly ſaid and ſworn, that they were in Correſpondence with *La Marre* the Man-Midwife; and there is not a Tittle of Reaſon to imagine they correſponded with any other Perſon of that Name: And, ſecondly, that all the reſt of the Circumſtances which make Parts of the Evidence above ſtated prove, that they muſt have had ſuch a Correſpondence.

2. If it were a Letter to *La Marre* the *Accoucheur*, it would not prove this *La Marre* to be the Man; becauſe he does not correſpond with Sir *John*'s Deſcription:---That will be ſeen more particularly hereafter. In the mean Time, if Sir *John*'s Account be falſe, as they ſay it is, it will leave this the only Man to whom that Addreſs and Deſignation will belong. If it be miſtaken in ſuch Sort as ſhall be hereafter ſhewn, it will come to the ſame Concluſion. If it were ſo true and ſo clear as to exclude this *La Marre*, which ſo much Evidence eſtabliſhes for the real Deliverer of Lady *Jane*, it would yet prove the Reality of the Delivery, though by a Hand who is traced by no further Evidence.

3. It is admitted, that the Book was not at firſt intended to be ſeen; but *it is not certain* that this Article was not inſerted afterwards. *It is not certain* but it might be forged, is ſo new a Way of alledging and proving a Forgery, that it is not eaſy to deal with it.---The ſhorteſt Way is to refer to the Pocket-Book, where it will appear, that the Entry is of the ſame Hand-writing and Ink and Pen with another Article written at the ſame Time, and have the ſame Appearance as the reſt of the Book, of not being intended to be ſeen; not to mention, that if any Forgery had been intended, many other Entries of equal Conſequence might have been inſerted in the ſame Way.

4. The Article in Queſtion in the Pocket-Book relates to the Date of one of thoſe four Letters which the Purſuers ſay Sir *John* forged, and which begins with acknowledging the Receit of a Letter from Sir *John* on the 10th current. It is therefore probable, ſay the Purſuers, that this Article was inſerted to ſupport the Impoſition intended by thoſe Letters, and the 10th put inſtead of the 11th by Inaccuracy, or to be more like ſome other Entries of Letters written, inſerted in the ſame Book, or to take off the Appearance of Art.

The Article was written with Lady *Jane*'s own Hand in *September* 1749, and conſequently at a Time when it was impoſſible to foreſee any Uſe could be made of it.---It is admitted, that the Book was not intended for any Body's Inſpection at firſt; and it is not even ſaid when it was intended to be publiſhed, or what Reaſon there is to imagine ſo.---The Book itſelf was recovered, by mere Accident, from a Lodging, where it had been careleſsly thrown by with other looſe and unimportant Papers. It has the Dates of the Periods preceding and following it. There is, in ſhort, no Room to ſuſpect Fraud,

Fraud, nor do the Purſuers give a ſingle Reaſon for imputing it: The Conſequence of which is, that the Book, inſtead of being affected by thoſe Letters with the Appearance of Fraud, goes a great Way to prove, that ſuch a Correſpondence actually obtained between them and *La Marre*; and even that the Letter to be mentioned was taken from a real one written by *La Marre*. For though it was very natural in making an Entry of Letters written on the 10th to be ſent on the 11th, as of the Day it was ſent, it is impoſſible to imagine, that if the Entry had been made afterwards to accommodate with a forged Letter referring to one of the 10th, they would not have made the Entry exactly conformable to the Letter.

5. It is very improbable, that while ſo many unintereſting Letters have been preſerved, ſuch important Letters as thoſe from *La Marre* ſhould have been loſt.---The Worth of this Obſervation may be tried in two Words ---They have preſerved very few or no Letters which they received in *France*, intereſting or not intereſting; and thoſe which they have preſerved in *England* were recovered, as this preſent Book, by mere Accident, after lying by for Years neglected in the Garret of a *London* Lodging Houſe, as Things not worth their Care to ſave or deſtroy.

6. This Objection contains the only Reaſon for thinking the Entry was made in the Pocket-Book after the Time, *viz.* that Mr. *Stuart* is ſaid to have writ to Mr. *Waters* on the 11th of *September*; whereas the Letter was from Lady *Jane*.---That ſuch an Objection may not make too deep an Impreſſion, it is fit to ſettle the Claims between Sir *John* and Lady *Jane* to the Merit of having writ that Letter.---It was ſolely on the Subject of Lady *Jane*'s Annuity, by the Duke, which Mr. *Waters* paid her; and informing him, that Lady *Jane* had drawn for the Quarter which was then due.---Sir *John*, it is believed, wrote the Letter, and Lady *Jane* wrote her Name.

The Purſuers think it neceſſary alſo to account for their having fallen upon the Name of *La Marre:* They ſay it was *by Hazard.*—It was ſingularly lucky, *by Hazard* to fall upon a Name which correſponded in ſo many Particulars with their own Story, as could not poſſibly coincide in two Parts of a Falſhood invented without any Concert. But why is this Name ſuppoſed to have been taken up *at Hazard?* Becauſe *La Marre* is the commoneſt Name in the World.—To prove how common a Name *La Marre* is, the Purſuers, after five Years Labour, have thrown into the Proceſs a Paper quite unauthenticated, which they call a Paſſport of one *François Eli De La Marre.*—Who wrote it, where it came from, or by what Authority it makes any Part of a Proof, which, by Law, ought to be all upon Oath, thoſe who have taken upon them to defy Juſtice in ſo many other Particulars, may beſt explain.—The only Uſe which it ſeems poſſible to make of it is, that it was in the Purſuers Opinion very obvious and natural, to call a Perſon *La Marre*, whoſe formal Signature was *De La Marre*, which is an Anſwer from that beſt of Authorities themſelves, to an Argument which deſerved no Anſwer from any Body elſe.

This *François Eli De La Marre* they ſuppoſe may have given Sir *John* the Hint of the Name; upon which Hint they alſo ſuppoſe, Sir *John* may have improved ſo far, as to change the Name of *François Eli* into *Pierre*; and this he took *by Hazard* too.—How ſtrange, to invent a Falſhood for the Sake of ſuch an Argument!

Notwithſtanding all the Objections which have yet come under Examination, the Defender has great Reaſon to flatter himſelf that it ſtands eſtabliſhed by a Body of Evidence, which could not have been hoped for after ſo great a Length of Time---That the *Pierre La Marre*, a middle-ſized, black, thin Man, whom all the Witneſſes deſcribe as applying to and practiſing Midwifery, in which he had conſiderable Skill: Who told Mr. *Menager* that he had delivered a foreign Lady in the Year 1748, of an advanced Age, and who had come from *Rheims*, of Twins, and, as he (*Menager*) believed, in the Houſe of *Le Brun*; one of whoſe Children was left under his Care, and put out to Nurſe *vers Belleville*, or *Menilmontant*: Who told the ſame Circumſtances to *Gilles*, and he repeated to Mr. *Moreau*, a Man of ſtrict Honour, who wrote them down in his Preſence; and who, upon Occaſion of *Gilles* chooſing to forget ſome of the Circumſtances, has produced them upon Oath: Who alſo mentioned to Mr. *Simoneau* and Mad. *Granette* his having delivered a foreign Lady, and having the Care of a Child of hers: That this Child was nurſed by *Garnier*, at a Place called the *Haute-borne ſur le Chemin de Menilmontant:* That *La Marre* viſited the Child often, paid the Nurſe's Wages, and told *Garnier* and her Neighbours it was a Twin: That the Twins were both Males, and belonged to Foreigners and People of Condition—Is unqueſtionably the ſame Perſon whom Sir *John*, Lady *Jane*, and Mrs. *Hewit*, mentioned at *Rheims* as the *Accoucheur* of Lady *Jane*, and to whoſe Care *Sholto* was left at Nurſe; who is reported by ſo many Perſons to have correſponded with Sir *John* on the Subject of this Child left under his Care, and at Nurſe at a Place which was denominated from *Menilmontant*, and conſequently referred to by Lady *Jane* in the Pocket-Book, as Sir *John*'s Correſpondent; who was mentioned to Mr. *Loch* as her *Accoucheur*; whom Mrs. *Hewit* deſcribes accurately as her *Accoucheur*; and whom Sir *John* will be found to deſcribe, though inaccurately.

PART V. BOOK II.

Objections to La Marre conſidered.

CHAP. I.

La Marre's *Letters*.

IT remains to conſider what Weight belongs to the Anſwers which the Purſuers give to the Evidence of the Delivery, as ſtated above.

Serv. p. 71. They alledge, 1. That four Letters, Part of the Evidence given on the Service, are manifeſtly forged.

Their Obſervations upon theſe four Letters occur in ſo many different Places of ſo many different Volumes, that it is difficult to collect the preciſe Aim which this Part of their Objection takes.

The Extent of it ſeems to be this: They alledge, that Sir *John* and Lady *Jane* never had any Correſpondence with a Perſon of the Name of *La Marre*: That the Child ſaid to have been left under his Care from *July* 1748 to *November* 1749, was purely ideal; and that they only got Poſſeſſion of him in the Month of *November* 1749: That being informed, upon their Return to *England*, of the Suſpicions which were entertained of the Birth, and Lady *Jane* being deſirous of removing them from her Brother's Mind, theſe Letters were all forged, ſubſequent to the 9th of *June* 1752, to ſerve as Evidence of the Delivery: And upon this they argue, not only that they are no Evidence of the Truth, but that they ſerve as Proofs of the Falſhood of that Story.

To underſtand how far this Inference is juſt, it is neceſſary to look back into the foregoing Proofs; and conſider how the Fact of the Delivery, and Exiſtence of the ſecond Child, ſtands atteſted without the Aid of Sir *John*.

It has been repeatedly declared, and ſolemnly atteſted by Lady *Jane* and Mrs. *Hewit*, againſt whom no Shadow of Imputation lies; and they are confirmed by the moſt convincing Proof already ſtated, of Lady *Jane*'s Pregnancy, in all its Symptoms, and of her Appearance of Sickneſs and Recovery afterwards. It was talked of from the firſt with ſo little Reſerve, that they wanted to carry along with them to *Rheims* a Witneſs, who, if the Purſuers be right, muſt have revealed the whole Impoſture. They talked of the Child they had left at *Paris* under the Care of *La Marre* with all the Accuracy of Deſcription which his Age would, and his Habit did indicate: They addreſſed their Friends to viſit him, ſpecifying the Place where he was at Nurſe. How many actually ſaw him appears only by Conjecture from the Account of Nurſe *Garnier*; but that Lord *Blantyre* Serv. 51. G. ſaw him is in Proof. The Correſpondence between their Accounts and thoſe of the *French* Witneſſes has been noticed before. The ſingle Circumſtance of their having a Child in the Year 1748 and 1749, induces neceſſarily that they muſt have correſponded with Somebody: The reſt of the P. P. 82. Evidence eſtabliſhes, that it muſt have been with *La Marre*. That Sir *John* had ſuch a Correſpon- App. to Def. dence in Fact, is proved not only by thoſe who remember the Anxiety with which his Letters Mem. were expected, and the Communication of their Contents at the Time they received them; and by Evidence more certain ſtill, Lady *Jane*'s Pocket-Book; but alſo by Sir *John*'s Letter to *Clinton*; and by both his Oaths, that as early as the Year 1751 at leaſt, he copied ſome Letters ſigned with that Name.

All that is known of the four Letters in Queſtion is a Collection, made upon Examination of them, that they were not genuine, and that they were found in a Trunk with many uſeleſs Papers, Letters of Compliments, and other ſuch Things: But how or when they were made up or tranſmitted to Lady *Jane* does not appear.

P. P. 86. H. That they were in Fact fabricated, is inferred from the Hand-Writing, the Spelling, and the Style, —— 87. I. wherein the Witneſſes find many *Angliciſms*.

There is, however, a very obſervable Difference between the three firſt Letters and the fourth.—The Incidents mentioned in the firſt are more natural, the Order of telling them better preſerved, and the Style leſs incorrect, though ill ſpelt, and mixed with what the Witneſſes call *Angliciſms*: And though they are all written in the ſame Hand, and as it ſhould ſeem with the ſame Pen and Ink, the Materials and Helps to compoſe the firſt three Letters were apparently different, and better than thoſe which compoſed the laſt.

It

The fourth Letter refers to *Du Bois*, a Miniature Painter, as the Hand which brought it. It ſuppoſes an Intercourſe of Letters ſtill ſubſiſting between Sir *John* and *La Marre*, and imports to be an Anſwer to ſome Account which Sir *John* ſent him of the Children. Now all that appears of this is, that in the Year 1751, Sir *John*, after having intermitted his Correſpondence from the Year 1749, received a Letter from him to recommend *Du Bois*, a Miniature Painter, to his Protection; wherein it would occur of Courſe to take ſome complimentary Notice of the Children. The Purſuers ſay the Letter in Queſtion goes upon a groundleſs Idea of a Letter, which was never written, to *La Marre*; and of a Correſpondence which never exiſted.

Admitting theſe Obſervations upon it to be juſt, the natural Inference (upon four ſuch Letters, ſuppoſed to be fabricated at the ſame Time) would be, that ſome more perfect Memory of the real Letters ſuggeſted the three firſt than the laſt; more eſpecially, as the Circumſtances ſpoken of in the firſt were particular and ſtriking; the laſt, meer Style and Compliment.

Suppoſing it to be ever ſo apparent that theſe are not genuine Letters, they muſt ſtill be judged as they actually ſtand, and with ſuch Reference to the real Tranſaction as they actually bear; and under that View it muſt be conſidered, for what Purpoſe it may be imagined they were fabricated.

The Purſuers inſiſt that they were forged to deceive the Duke of *Douglas*, and brought down by Lady *Jane* into *Scotland* in *Auguſt* 1752, in order to be ſhewn to the Duke.

To maintain this Hypotheſis, it is neceſſary, in the firſt Place, to eſtabliſh, that the Letters were fabricated after the 9th of *June* 1752, when the laſt of them bears Date, and before *Auguſt* 1752, when ſhe went to *Scotland*.

Upon this Head it is argued, that they muſt have exiſted before *April* 1753, becauſe the Trunk in which they were found was at that Time depoſited in the Hands of *Linaſay*, the Town-Clerk of *Edinburgh*. Serv. 22. F.

This muſt be a Miſtake of *Lindſay*'s, becauſe her Watch was found in it, among other Things, which appears to have been pledged in *London*, and redeemed but in her laſt Journey thither in the Year 1753. D. P. 959. E.

It is alſo alledged, that Lady *Jane* told Mrs. *Menzies* ſome Time before ſhe went to *Douglas* Caſtle, ſhe had Letters in her Pocket from the Man-Midwife, which muſt have been theſe forged Letters, or it is highly probable thoſe genuine Letters would have appeared. P. P. 80. D.

But this Woman is in much the ſame Claſs of Life as their *French* Witneſſes. She keeps a ſmall Shop in *Edinburgh*, and has the Honour to be a Relation of Mr. *Archibald Stuart*. She pretends, however, to a great Degree of Intimacy with Lady *Jane*, which ſurely, in the Caſe of ſuch a Woman, required Something more than her own Evidence to get over the groſs Improbability of it. She talks of converſing with Lady *Jane* on the Subject of her Children, as if it were their ordinary Topick of Converſation; and yet this extraordinary Intimacy is ſupported by no Kind of other Evidence. Her Name does not appear in any Letter, Converſation, or other Part of the Evidence.

And yet Mrs. *Menzies* pretends to recollect what no other Perſon, however intimate, remembers, not even Mr. *Loch*, who talked with her on the ſame Subject, and heard her Account in a very different Way. Serv. 25. A.

It implies much Suſpicion when a Witneſs, from whoſe Situation and Opportunities of Knowledge Nothing was to be expected, remembers more than all the other Witneſſes together.

There is a remarkable Paſſage in Mrs. *Menzies*'s Depoſition, that Lady *Jane* told her ſhe knew the Duke called her Children *Nunnery Children*.—An abſurd Piece of Ribaldry, which Mrs. *Menzies* was more likely to hear from People upon her own Level in Life, if ſhe heard it at all. Who ever heard it ſaid by, or reported as coming from, the Duke? While he was under the Impreſſion of thoſe Falſehoods which Mr. *Archibald Stuart*, the Agent for the *Hamilton* Family, was always pouring in his Ears, he called them *Pretenders*. After the Death of *Sholto*, in the Year 1753, they were reported, upon the Faith of Major *Cochran*, to have been bought out of an Hoſpital. Whether this, which was ſeriouſly inſiſted upon by that Party till it was directly falſified, was corrupted, when it got among a lower Kind of People, into *Nunnery Children*, or however Mrs. *Menzies* came by the Idea, it is manifeſtly impoſſible to have fallen from Lady *Jane*. P. P. 352. H.

But it is impoſſible to believe that Lady *Jane* had in her Pocket any Letters from *La Marre*, or any which ſhe believed to be ſuch, or any which ſhe intended to paſs for ſuch, at the Time mentioned by Mrs. *Menzies*; becauſe ſhe would certainly have referred to them in her Converſations with thoſe many Friends who were nearer her own Level, and with whom ſhe conſulted upon what was proper for her to do. Can it be believed that ſhe told Lord *Preſtongrange* ſhe could get Certificates from her Man-Midwife, as ſhe doubted not but he was alive? and at the ſame time give D. P. 370. G. Serv. p. 25. A.

D. P. 885. c. out in Converſation with others, that ſhe had Letters from him in her Pocket? So of Mr. *Loch* and Mr. *Hamilton*, nothing could have tended more directly to ſet her wrong in the Opinion of her beſt and neareſt Friends, than to tell them one Story, and the World another; for ſuppreſſing ſuch a Circumſtance would make the Stories ſo different, as to be contradictory.—If her Honour is to be held ſuſpected without Evidence, merely becauſe the Purſuers, out of what they call Regard for the Name of *Douglas*, revile her, her Senſe, which Nobody queſtions, is a ſufficient Anſwer.—Again, the Letter to which that dated the 9th of *June*, 1752, refers, was received in 1750, or 1751, at lateſt. Can it be conceived that, after the 9th of *June*, and before *Auguſt* 1752, Sir *John* ſhould have forgot the Date of a Letter received a Year or two before, ſo as to date it within two Months of the Time of Writing? whereas, in the Year 1753, ſuch a Memory as his might miſtake between the Years 1751 and 1752.

D. P. 368. F. —— 371. B. Min. 9. c.

That theſe Letters were brought down by Lady *Jane* in *Auguſt* 1752, is ſaid without a Tittle of Evidence, or Shadow of Probability, only as the Ground of another Hypotheſis, that ſhe was partaking in the Fabrication of them.

To maintain this Hypotheſis, it is urged, that Sir *John Stewart* has declared, that the Letters were folded, directed, and ſealed, at the Deſire of Lady *Jane*.

Now Sir *John*'s Declaration is expreſs to this, that Lady *Jane* *wrote* for the *original* Letters; upon which he gave them to be copied by one *Clinton*; and he does not know whether he ſent Lady *Jane* the Copies or the Originals: And he ſubjoins, that poſſibly Lady *Jane* may have deſired to have them ſo folded, directed, and ſealed, to render them more ſatisfying to the Perſons ſhe was to ſhew them to, or to ſerve inſtead of the Originals, if they were loſt.

Whatever may be thought of Sir *John*'s Memory, as to the Originals being actually found by him on the Occaſion of Lady *Jane*'s ſending for them, it is clear, from his Evidence in the Part referred to, that Lady *Jane* was at *Edinburgh* at the Time the Letters in Queſtion were written, and that ſhe ſent for the Originals without giving him an Alternative. It is his own Reflection, upon the Event which actually happened of his having loſt the Originals, that Lady *Jane* might poſſibly wiſh to have them folded, directed, and ſealed, as before-mentioned; becauſe it is plain that Lady *Jane* thought the Originals would be forth-coming, and her Imagination did not reſort to an Alternative.

Sir *John* had been toſſed about into various melancholy Situations, and in the latter End of the Year 1751 had been robbed of his few Things by a Servant. Theſe are Facts perfectly well eſtabliſhed; and in the Year 1756 he gave theſe as his Reaſons to Mrs. *Napier* for not being able to find *La Marre*'s Letters.

P. P. 15. c.

Hence it appears that theſe Letters were not fabricated while Lady *Jane* was in *London*; they were ſent for from *Edinburgh*, and tranſmitted to her then: And whether this happened in the Year 1752, or 1753, muſt be collected only from general Probability, as no Evidence goes particularly to it.

It is urged as a Proof of Lady *Jane*'s Conſciouſneſs that the Letters were forged, that ſhe ſhewed them to Nobody, not to Lord *Preſtongrange*, Mr. *Loch*, Mr. *Hamilton*, *&c.*---It is not very obvious what Uſe can be made againſt her of this Conſciouſneſs ſo acted upon. If ſhe had received them in 1752, and ſaw their Forgery, and never ſhewed them, all the Inference upon it ſeems to be, that ſhe never meant to reſort to ſuch Proofs of a Delivery, which her Conſcience had told her would be more honourably proved whenever it ſhould be drawn into Queſtion.

The Purſuers of Courſe are not ſatisfied with the obvious Inference. Their Hypotheſis is, that, knowing them to be forged, and ſo forged as to betray themſelves evidently to any Inſpection, ſhe meant to ſhew them only to the Duke, who is ſuppoſed to know no *French*, and to have no Sort of Underſtanding, and to keep them up from others who had both.

The Proof on which this Intention is imputed to Lady *Jane* ſtands on this ſimple Bottom, that, after being refuſed Admittance to the Duke, ſhe wrote to him in the moſt preſſing and eager Manner, begging to be admitted for a few Moments; and calling down upon herſelf any Puniſhment if ſhe could not clear up her injured Innocence, and allowing that ſhe deſerved the utmoſt Rigour if ſhe could not fully juſtify herſelf.

D. P. 971. c.

This the Purſuers obſerve, is a plain Inference to the Letters.---How otherwiſe was ſhe to clear up her injured Innocence? As if ſtating her Hiſtory explicitly, and appealing to fair Means of Proof, which would eſtabliſh her Innocence or Guilt, would not better anſwer her Aſſurances to clear the Matter up, than three or four Letters from a Man the Duke never heard of, in a Language he is ſuppoſed not to underſtand.

This Idea of the Duke appears no where but in this Argument, and in this Part of the Argument only.---In *France* Lady *Jane* is ſuppoſed to have acted under ſtrange Fears of his Activity and Addreſs in purſuing her with Enquiries.---Now ſhe is ſuppoſed to riſque with him a Forgery, evident

evident (as they inſiſt) upon the firſt Inſpection of them. And yet the beſt Conſequence of ſhewing him theſe Letters would be his accepting them as Evidence, and founding Enquiries upon them which ſhe is ſuppoſed to foreſee would deſtroy her.

On the other Hand, Why did ſhe not ſhew them to Mr. *Loch*, who certainly knew no *French*, whoſe Situation would not have intitled him to keep them or make Enquiries upon them? Why not to Mr. *Hamilton* and others in the ſame Way?

In ſhort, if ſhe had them at all in the Year 1752, ſhe muſt have had them in that innocent Manner mentioned before. Knowing them not to be genuine, ſhe threw them by as Things of no Uſe; and they had the Fortune of many other worthleſs and neglected Things, to be preſerved, without any Care beſtowed upon them.

The Truth ſeems to be, that, in the Year 1753, when ſhe returned to *Scotland*, already ſtruck with the Diſeaſe of which ſhe died, emaciated, her Eyes failing, and her Spirits broken, ſhe found Major *Cochran* and *Archibald Stuart* had circulated, with great Induſtry, the Falſhoods mentioned in a former Part of this Caſe; and ſhe took the Part of ſending to Sir *John* for the original Letters: And he not being able to find them, but anxious to relieve as much as poſſible the Uneaſineſs ſhe expreſſed about them, ſent her the Papers now in Queſtion.---She was now become unable to examine, or even to read them, much more to uſe them, in any Manner whatever; and they were thrown by accordingly, and remained unnoticed till Mr. *Lindſay* produced them in the Manner mentioned before upon the Service.

And ſurely this is a more natural Account why No-body ever ſaw them, and why they were notwithſtanding found in her Trunk, than to imagine, that knowing them to be ſuch manifeſt Forgeries as could not be ſeen without Danger, ſhe ſhould ſuffer them to exiſt, and leave them to be detected after her Death.

This alſo accounts for the Converſation Sir *John* held with Mrs. *Napier*.—He told her he had received many Letters from *La Marre*, particularly concerning the youngeſt Child: Mrs. *Naiper* ſuggeſted that they ought to be taken Care of: Sir *John* anſwered, that he had been unfortunate; that he had been long in Priſon, and his Things toſſed about, he knew not how, or where, but promiſed to ſearch for them, and if they could be found, to ſend them to her.—Now if theſe Letters were meant only to quiet Lady *Jane*'s Mind, there is no Wonder that Sir *John* ſhould not reſort to them; but if they had been, as the Purſuers labour to prove, Acts of deliberate Forgery, careſully done to create Evidence of the Delivery; he, who muſt under that Imagination be ſuppoſed to have adapted them, at leaſt in his own Opinion, to that Purpoſe, would, without Queſtion, have referred to them on this Occaſion. P. P. 15. c.

Over and above the Objections already mentioned, the Purſuers inſiſt, that the laſt Letter, in particular, appears to have been the very one which Lady *Jane* read to *Iſabel Walker*, and which *Iſabel* gave an Account of to Mrs. *Hepburn*, before ſhe was called in to be examined on the Service: Upon the Receit of which Sir *John* damned *La Marre*, and ſaid, "What! is he "proving to me, that he brought Lady *Jane* to-bed?" and threw the Letter into the Fire. P. P. 341. i.

It happens to be impoſſible, that it ſhould be the ſame Letter, becauſe this is dated the 9th of *June* 1752, and that Letter which *Iſabel Walker* has always ſpoken of, was received in *Murray*'s Houſe, which they had left a Year before.

Nor is it to be believed, that after making ſuch a Reflection upon that Letter, they would have perſiſted in a Forgery liable to ſuch an Obſervation.

But Mrs. *Hepburn*'s Miſtake is accounted for: When *Iſabel Walker* is examined upon that Subject, ſhe remembered the Receit of that Letter while they were at *Murray*'s; and that it was the only Letter received from *La Marre* at *London*; and that it was read to them by Sir *John* and Lady *Jane*, and contained an Enquiry after the Children; and that he had taken the Opportunity of writing by a Friend who was come to *London*.——Sir *John* rolled it up careleſly, and was putting it in that Manner into his Pocket, which gave her Occaſion to obſerve, that it ought to be taken more Care of; referring to the Imputations which were thrown out againſt Lady *Jane*; upon which Sir *John* damned any Body who would call her Honour into Queſtion; but what became of the Letter ſhe knows not: She does not remember the Converſation ſpoken of by Mrs. *Hepburn*; but it is plain, that with only a very ſlight Change of one Circumſtance, it is, in all other Reſpects, the ſame Account which *Iſabel Walker* afterwards gave upon Oath. D. P. 368. e.

The Purſuers conclude this Subject with obſerving, that if the Letter now produced was the very ſame Lady *Jane* read to *Iſabel Walker*, ſhe muſt have been acceſſary to the forging it.

That it could not be the ſame, appears from the Receit of the real Letter being a Year or two prior to the Date of that produced, as well as from the other Circumſtances mentioned before.

Upon which the Purſuers obſerve, that if the firſt were genuine, ſhe muſt have known the laſt to be forged.——It is impoſſible to know what ſhe thought of the Letter produced; it it certain, that ſhe never made any Uſe of it.——If the Forgery be ſo plain, it is inconceiveable that ſhe ſhould think of uſing it; and the moſt probable Inference upon the Whole is, that ſhe never ſaw it, as it ſeems to have come to her Hands when her Life was too far ſpent to read it.

Upon the Whole, it is ſubmitted, that the Judgment to be formed of theſe Letters is, 1ſt. That whether genuine or not, they were ſent by Sir *John*, not in View of their being produced, and relied upon as Evidence, but merely to quiet Lady *Jane*'s preſent Anxieties. 2d. That moſt certainly they were never in Fact produced, or relied upon as Evidence by either of them, but came into this Proceſs by mere Accident. 3d. That the reſt of the Evidence of their Correſpondence with *La Marre*, is rather confirmed by them than weakened.

To apply them in Subverſion of the reſt of the Evidence, it muſt be proved, 1ſt. That Lady *Jane*, Mrs. *Hewit*, and *Iſabel Walker*, confederated with Sir *John* in this Falſhood: Nay, they muſt have ſet on Foot this Confederacy ſo early as the 11th of *September* 1749, to effect a Forgery, which, according to the Purſuers, was not thought of till the Year 1752; and this is alleged by the Purſuers, without a Tittle of Evidence to ſupport ſuch a Calumny. 2dly. That the reſt of the Witneſſes who have connected *La Marre* with them and their Hiſtory, are perjured; though being totally unconnected, it was abſolutely impoſſible to combine in the ſame Falſhood.

The only colourable Ground for imputing Fraud to any Body is, that Sir *John* in *December* 1762, when theſe Letters were produced to him, ſaid, That the Letter of *October* 1749, appeared to be of *La Marre*'s Hand, and the reſt of Mr. *Clinton*'s; and upon a ſubſequent Day, one other of the Letters, dated the 9th of *June* 1752, appeared to be of *La Marre*'s Hand-Writing.

P. P. 82. E. D. P. 449. F. App. to Def. Mem. p. 22.

In this Account Sir *John* is contradicted by *Clinton*, who ſays, that none of them are of his Hand-Writing: Mr. *Gray*, whom *Clinton* ſerved at *Edinburgh*, was not able to judge, upon Inſpection, whether they were his Hand-Writing or not; and it ſtands confeſſed, that *Clinton* uſed to write for Sir *John*, and tranſcribed Papers at which was the Name of *La Marre*.

He is further contradicted *ex Evidentiâ Rei*; for all the Letters are of the ſame Hand, and wrote at the ſame Time, and with the ſame Ink.

It is not ſurpriſing, that Sir *John*, a Man of ſeventy-five Years of Age, and nine Years after the Thing happened, aſſiſted only by a general Memory that *Clinton* had writ for him, ſhould, upon Inſpection, judge that to be *Clinton*'s Hand; which Mr. *Gray*, a Man of only fifty, converſant with his Hand, and ſwearing upon Compariſon of theſe Letters with one of *Clinton*'s, which he held in his Hand, could not diſtinguiſh them upon all that Examination from *Clinton*'s Hand.

And if this were Matter of Surprize, it would ceaſe upon obſerving, that his Sight was at that Time ſo bad, as to diſtinguiſh two Letters from each other by a Difference on the Face of them, which did not exiſt, nor could be imagined by any Body elſe who had Eyes.

All he knew was, that he had correſponded with *La Marre* on the Subjects mentioned in thoſe Letters; but whether they were the real Letters, he had neither ſufficient Memory, nor other Means of Judging; for his Eyes were ſo bad, that even with the Aſſiſtance of Spectacles, he could make no more of inſpecting the Letters than has been mentioned.

CHAP. II.

Of Sir John's *Declaration with reſpect to* La Marre.

THE next Objection laboured by the Purſuers is, that Sir *John*'s Account of *La Marre* is repugnant in many Particulars, which they call eſſential, to the reſt of the Evidence, highly improbable, and abſolutely falſe: From whence they infer, that the Coincidence, ſo far as it obtains, is purely accidental; and that the Whole Story is mere Invention, no Part of which had any Exiſtence.

That the Coincidence of the two Stories was merely the accidental Harmony of Truth and Falſhood; the Falſhood contrived without any Knowledge of Sir *John*'s what the Truth was to be; will be very difficult to maintain with thoſe who remember in what an infinite Variety of Particulars the Stories agree, and in how few circumſtantial Articles they differ.

The whole Hiſtory of the Delivery, in reſpect of Time, of Place, of a foreign Lady, of Twins, of the Habit of thoſe Twins, of nurſing the youngeſt near *Paris*, of the Time and Place of his Stay,

Stay, of *La Marre*'s Care of him, and of his being taken away, tallies exactly in both Stories.---The Deſcription of *La Marre*'s Perſon, Complexion, and his being a married Man, &c. agrees in both Stories.

The only Articles in which they differ are, that Sir *John* ſays *La Marre* was a *Walloon*, *as he believed*, *with whom he became acquainted in the Year* 1721, *at* Liege, introduced by Col. *Fontaine*. He *then* ſaid, as he thinks, that he was Surgeon to a Regiment, though his chief Buſineſs was Midwifery; that *he met him by Accident walking in the* Thuilleries, and he employed him for Cheapneſs; that he was at *Paris* upon a tickliſh Affair, which he believed would detain him ſome Time there. Decl. 6. C.

For the reſt he falls directly in with the Account given by all the Witneſſes, that he often called upon Lady *Jane* from the Time of her coming to *Paris*; that he often met him at the *Caffe du Malthe*, on the *Quai Pelletier*, and the *Source de Bourgogne*, near the *Pont St. Michel*; that *La Marre* called frequently through the Day, and if he miſſed to do it himſelf, ſent his Servant; and that he came ſometimes in a Hackney-Coach, and ſometimes on Foot.

The Purſuers ſay, it is not true that *La Marre* had viſited Lady *Jane* before her Delivery, 1. Becauſe the *Godefrois* do not remember to have ſeen him.---*Godefroi* was generally out of his Houſe on other Buſineſs the whole Day; and neither of them remember *Pelletier*, who yet went to Sir *John* at the *Hotel de Chaalons*. 2. Becauſe Mrs. *Hewit* only remembers that ſhe knew *La Marre* was to bring Lady *Jane* to-bed, but does not know whether the Day of the Delivery was the firſt Time Lady *Jane* had ſeen him; but ſhe does not remember to have ſeen him before.---It is unjuſt even to Abſurdity, to decide, that a Thing entirely circumſtantial never happened, which one Witneſs aſſerts, merely becauſe another does not happen to remember it at the End of ſeventeen Years. But it ſeems ſtill more unjuſt to rely upon the ſame Witneſs in one Article which ſhe does not remember, and refuſe her Credit in another which ſhe does. If it be thought, on the Credit due to Mrs. *Hewit*'s Memory, that Sir *John* is miſtaken about the Time *La Marre* firſt came to ſee Lady *Jane*, let it be decided on the ſame Footing, that *La Marre* certainly did attend her Delivery. P. P. 828. C. —— 829. B. P. P. 991. E. —— 254. I.

In the ſame Stile of Argument, they deny that Sir *John* and *La Marre* met at the *Source de Bourgogne* twenty Years ago, becauſe the Landlord of that Houſe remembers neither of them; and that *La Marre* ſent a Servant, becauſe *Beaujeu* ſays he kept no Servant.---It is not worth referring to what has been ſaid of his Evidence before, to refute ſuch a Cavil as this.---It is clear from *Garnier*, that *La Marre* had a Servant, with whom ſhe left a Meſſage, in Conſequence of which he came to ſee the Child. But it makes nothing to Sir *John*'s Veracity, whether it were a menial Servant, or any other Meſſenger he employed. —— 989. D. D. P. 940. F.

What miſled Sir *John* to call him a *Walloon*, or to connect with him any Paſſage of the Year 1721 at *Liege*, it is impoſſible to ſtate by Evidence; and the Manner of Proceeding in his Examination was well calculated to leave that for ever unexplained.

Upon the Oath of Mr. *Archibald Stuart*, that he had Reaſon to believe, Sir *John* was about to leave the Country, though he was then abſolutely unable to take a Journey of a Mile, he was ordered out of a ſick Bed, where he lay under a violent Inflammation in his Bladder and Ureter, to attend immediately in Court. He could not bend his Body ſo as to ſit: He was carried in a Chair ſtanding, and ſupporting himſelf by the Sides of it, while one walked behind to hold the Head of the Chair up, that it might not fall upon him; and in Court he leaned againſt a Trunk placed on a Chair, and was examined in that Condition three Days ſucceſſively, for four Hours each Day, proving *ex Evidentiâ Rei*, that the Oath which produced the Order for his Examination was falſe.

It was in vain objected that the Defender was not yet legally in Court: That no Condeſcendence, either in general, or of the Facts he was then to be examined upon, was given in: The Anſwer was, "It is ſworn he is about to leave the Country."

It was in vain offered to give Bail of 50,000*l.* or any other larger Sum the Court would name, that he ſhould not leave the Country.---The Anſwer was, "It is ſworn that he is about to leave the Country."

In this painful Condition---a natural Rack---forty-ſeven Interrogatories were adminiſtered to him, containing ſome of them three or four Queſtions each---one hundred and twenty-ſix Queſtions in all, were put to him, over and above the additional Interrogatories which were framed upon the Spot, on the Occaſion of his Anſwers---a Method rather more calculated to confound the Perſon examined, than bring the Truth to Light.

Add to this, Sir *John* was ſo deaf, that the Queſtions were put to him in Writing, one by one; and ſo blind, that Spectacles could ſcarce help him to read them.

He was examined without Oath, as it was pretended not to ſerve as Evidence, but for the Purpoſe of Expiſcation; and yet, how inconſiſtent! it was ordered to lie in *retentis* under the Seal of the Court.

This

This Secrecy was immediately violated, and the Authority of the Court was violated, to two ſhameful Purpoſes; the bringing a fraudulent Action in the public Name, in the *Tournelle* of *France*, in order to corrupt the Evidence; and the ſuppreſſing One-half of the Truth, to make the Defect a Ground of Objection to the Evidence of the Perſon thus examined.

To ſerve this laſt Purpoſe more effectually, upon Sir *John*'s ſecond Examination, no Queſtions were put to him on the Subject-Matter of his laſt Examination; whereby the Defender was put into this Situation :---Being deprived of the previous Information given to all Parties by the common Courſe of Proceeding, and more particularly neceſſary to him, who was at leaſt innocent and unknowing of the Fraud (if Fraud had been committed), he was unable at firſt to examine the Witneſs, to explain the Defect and apparent Repugnances in his Teſtimony; and was prevented, in any After-time, when their Condeſcendence explained the Ground of their Objections to his Birth, to come at ſuch Explanation.

In this Condition it is impoſſible to do more than conjecture at the Reaſon of Sir *John*'s ſeeming to wander from the reſt of the Witneſſes.

P. P. 9 B. Decl. 6. D. Serv. 25. A. Decl. 8. B. D. P. 1028 r. It is clear, even from the Evidence, that Sir *John* was connected with *Fontaine*, *Le Brun*, and *Pelletier*.---From *La Marre*'s Book it appears that *La Marre* was connected with Perſons of the Name of *Fontaine*, *Le Brun*, and *Pelletier*: And it is highly probable, from Mad. *La Marre*'s Declaration to the *Huiſſier*, that Letters from Sir *John* to *La Marre* were burnt by his Widow as uſeleſs. ---It is clear alſo, that Sir *John* was at *Liege* in the Year 1721, where he may have been acquainted with Colonel *Fontaine*. If he has, under ſuch an Examination, transferred an Idea to *Liege* in 1721, which belonged to *Paris* in 1748, does it lie in the Purſuers Mouths to pervert and miſ-conſtrue it into purpoſed Falſhood?---In their Mouths, who laid the Plan of circumventing the Witneſs and the Defender, in a Manner unknown to Juſtice, and ſhocking to common Senſe?

And yet this is the only Inſtance in which he is found directly wrong.

P. P. 246. C. ——246. F. His ſaying that he was in Uſe to meet *La Marre* at the *Thuilleries*, or *Luxembourg*, at an appointed Walk, was an Error which his firſt miſ-conceived Idea of *La Marre* led him into; but he corrected it, and declared that he did know his Addreſs, and reſorted to him by Means of that Knowledge, tho' he had then forgot it: And what ſhews his ſincere Forgetfulneſs is, that though his Wife had told him, the Day before his Examination, where it was, he had forgot the Place ſhe told him of; nay, he confeſſes that he did not recollect it to be the Place when ſhe told him of it.---Now, who can reflect upon Sir *John*'s Character a Moment, even with a prejudiced Opinion, imputing Fraud to him, and not be ſenſible, that if any Falſehood had been in his Purpoſe, he would inſtantly have adopted the Plan ſo pointed out to him, if his Memory had concurred? Perhaps the Idea of the *Thuilleries* was originally ſuggeſted to him by the real Place of *La Marre*'s Reſidence, which was near that noted Part of *Paris*.

So his deſcribing *La Marre* to have come up to *Paris* upon a tickliſh Affair, was the Idea which occurred to him of a Man's Reſidence at *Paris* whom he erroneouſly conceived to have ben acquainted with at *Liege*.

That *La Marre* had told him that he had been Surgeon to a Regiment, though his principal Buſineſs was Midwifery, remains ſtill doubtful, whether it was correctly remembered or not; for though it be agreed on all Hands that *La Marre* never joined any Regiment in that Character, he appears to have talked of ſuch Pretenſions to *Menager* as well as to Sir *John*.

But who can doubt that he thought himſelf right, even in theſe ſmall Circumſtances, when he appealed to Colonel *Fontaine*, and mentioned where he lived in the Year 1756, when he was actually alive, and living in that Place; and *Pelletier* and *Le Brun*, in the Year 1762; who muſt have confirmed, explained, or totally confuted him, if they had not died before the Proof was taken in this Cauſe; which Sir *John* could not poſſibly foreknow?---And ſhall the Purſuers on any Occaſion, but moſt particularly on ſuch an Occaſion as this, take Advantage of the Loſs of Evidence which the Act of God has deprived the Defender of?

But why is this Slip of Sir *John*'s Memory to be preſſed, when he appears to have fallen into the ſame Errors upon Occaſions which Malice itſelf cannot tax with Blame? Why againſt him, when other Perſons confeſſedly honeſt have fallen into Errors the ſame in Kind, and only more conſiderable in Degree?

—— 337. K. —— 340. D. The Witneſſes deſcribe Sir *John* as open, generous, honeſt, extravagant, idle and profuſe, incapable of telling a Lye; but very liable to Miſtakes, from his Hurry and Precipitation, and particularly in Names and Dates.—One obvious Conſequence of his Turn of Mind is, that he would be apt to confound, miſapply, and alter Circumſtances. Accordingly his Friends, who reſpected him, and thought him incapable of telling a Lye, deſcribe him as ſtrangely poſitive in his own Miſtakes, till he was convicted by ſome Circumſtances. An Inſtance of this is, that in the Year 1749 he was at the Houſe of Mr. *Hepburn*, in *Boulogne*, eight Days, and made Mr. *Hepburn* a Preſent

ſent of a Night-gown; and yet he poſitively denied that he had ever been there, and would not be convinced of it till they actually ſhewed him the Gown. It is obvious how ſtrongly ſuch a Denial of his Reſidence at a Houſe in *Paris* might have been preſſed againſt him; and yet the Concluſion would have been falſe, and fatal to his innocent Child.---Thoſe who have Authority to decide upon the Fate of their Fellow-Citizens, cannot be too cautious how they ſuffer poſſible Conceits and mere Inferences to weigh as poſitive Evidence.---Thoſe who give this Account of Sir *John*'s Idleneſs, ſtake themſelves by Oath upon this, that he was incapable, in Point of Honour, to meditate a Fraud, and for Want of Steadineſs to perſiſt in it; and they are ſure that, if the Children had not been his, he would, in ſuch bitter Diſtreſſes as he laboured under, have freed himſelf from them.

This Cauſe itſelf affords many Inſtances of the ſame Frailty; ſome of which the Purſuers have laboured to turn to his Diſadvantage, but without Succeſs; others are too plainly accidental to admit of an ill Conſtruction.

He ſent Mrs. *Napier* upon a ſleeveleſs Enquiry after *Michel*'s, as the Houſe of Delivery, when *Le Brun*'s had been previouſly mentioned both by him and Lady *Jane* as the Place of Delivery; and to mention *Michel*'s could end in nothing but finding the Enquiry abortive, as it proved; and if the Story had been falſe, he never would have placed the Delivery at a Place where he had lodged. P. P. 1. C. Serv. p. 25. A. P. P. 392. F.

Diſcharging his Footman at *Aix-la-Chapelle* was preſſed upon him by the Purſuers, as a Circumſtance inferring ſtrong Suſpicion "Il ſe defait d'un Témoin importune."---He could give no Account of it, and was delivered from the Suſpicion by the accidental Diſcovery of *Quibel*, the Footman's Wife, who explained that they wanted to take him along; but he refuſed on Account of his Danger in *France*, becauſe he had deſerted from the *French* Troops; and this was confirmed by a Letter to Lord *Crawford*, afterwards recovered. —— 566. D. D. P. 489. C.

That he came from *Dammartin* to ſee the Child and take up Money in *Auguſt* 1748, and lodged at *Godefroi*'s, is now exceedingly manifeſt; and yet Sir *John* remembers nothing of it; but inſtead of this Journey, tells a circumſtantial Story of his coming to lodge at *Godefroi*'s in *June* preceding to take up Money, when it is manifeſt, by the concurrent Accounts of them all, he was at *Rheims*: And yet it is impoſſible to impute a deſigned Falſhood in mentioning the Journey he did not make, or ſuppreſſing that which he made. That he went, in *October* 1748, with Baron *Macelligot* to ſee the Child, and no Blame can be imputed to that Journey, is now confeſſed on all Hands; and yet neither he nor the Baron remember the Quarter or Houſe they lodged in, nor whom they converſed with. D. P. 364. A.

That he was at *Paris* again upon an innocent Occaſion when he went to ſee the Child in Summer 1749, is exceedingly plain; and yet he can give no Account of where he lodged, or with whom he converſed. P. P.* 442. *1.

Confining his Stay at *Paris* in Summer 1748 to twenty-two Days, when the real Period, if he had remembered, would have confirmed the Story he was telling, was an innocent Miſtake.

He had no Memory of what happened to him at *Dammartin*, the Time he ſtaid there, the Quarter, the Houſe, the Landlord, or any Incident which befel him; inſtead of which he tells very circumſtantially, that the Nurſe he brought from *Paris* fell with Child, and that a Variety of other Nurſes, out of a Principle of Humanity, ſuckled the Child till they got one who would go with him: Whereas the real Story is a clear Account, that Nurſe *Favre* agreed, in order to accommodate them, to attend the Child to *Dammartin*; and inſtead of falling with Child loſt her own Infant by a Fever, and continued with them till they procured Nurſe *Margin* to attend the Child to *Rheims*:---A Story, if he had recollected it, much more conſiſtent, clear, and fit to ſupport the general Story he was relating. P. P. 879. C. —— 882. F.

Sir *John* has called Mr. *Andrieux* his Landlord at *Rheims*, and firmly believed that was the only Houſe he had lodged in at *Rheims*, till *January* 1763, when he had a confuſed Idea that he had uſed two different Lodgings at *Rheims*, and begs Mr. *Maillefer* to enquire of *Andrieux* at whoſe Houſe he lodged, whether he had lodged any where elſe; becauſe he is ſure, if it were ſo, that Mad. *Andrieux* found out the ſecond Lodging for them.---If this could have been perverted into any Thing but a mere Miſtake, what Volumes of invective Comment would have followed the Diſcovery, that he never lodged at the Houſe of *Andrieux* at all? —— 826. C.

Sir *John* ſays, that in the Year 1748, he ſtaid two Days, in his Way from *Dammartin* to *Rheims*, at Mr. *Leſly*'s at *Villers Coterets*, a Town about 30 or 40 Miles from *Paris*.---Mr. *Leſly* ſays, that he did not ſtay there, but only ſent a Meſſage of Compliment by his Servant.---It turns out, upon Enquiry, that Mr. *Leſly* did not live there in the Year 1748. He ſays he was only about a Year in Confinement in *London*, though it is certain he was above three; and that he came to *Scotland* in 1752, (this was before Lady *Jane* died) though in Fact he did not return to *Scotland* till about 1756. P. P. 355. B.

D. P. 606. D. Mr. *Maillefer* was positive that Sir *John* gave out, when he left *Rheims*, that his Journey was destined to *Villers Coteret*, and concealed that Lady *Jane* was to go with him; and this stood for a manifest Proof of Concealment, till it was found that *Maillefer* had recommended him and two Ladies to *Godefroi* at *Paris*.

P. P. 919. E. —— 913. C. Madame *Awdry* described Lady *Jane* in the Stage-Coach by such Marks as had been conveyed to her for that Purpose, and was positive she could speak no *French*.---This was regarded as a Master-Piece of Disguise, till *Vatry* and her Maid related a great Deal of Conversation which they actually had held with her in *French*.

D. P. 907. E. Lady *Rutledge* tells a very minute and circumstantial Story of the two Children she saw at *Morais* in the Year 1748; and of the Conversation she held with Lady *Jane*, upon the Subject of her own Pregnancy, which was true of the Month of *December* 1749, at *Dunkirk*..---From this the Pursuers take the Freedom to infer, that Lady *Rutledge* was guilty of downright and wilful Perjury, because she happens to speak of Incidents which materially contradict this Hypothesis.

—— 396. D. Lady *Eglinton* relates a circumstantial Conversation between herself and Lord *Crawford* in the Year 1746, when his Lordship was in *Scotland* with the Army; wherein the Withdrawing of the Pension, which happened in 1749, is drawn back to the Intercourse Lord *Crawford* had with her at *Aix*, which happened in 1747 and 1748; and the Whole is followed with a full Account of Lady *Jane*'s Distresses at that Period, upon the Withdrawing of that Pension: Whereas Lord *Crawford* never returned to *Scotland* after Lady *Jane*'s Marriage.

If there were nothing in the Way but an Interval of fifteen or twenty Years against the Memory of Witnesses advanced in Age; or no more than the Observation made by Persons of Rank and Character upon their own Experience, of Sir *John*'s Powers of Memory, and of his Habit of relating past Transactions; or no more than the many striking Instances which this Process affords of him, and many other unexceptionable Persons, falling into Mistakes as broad as this now insisted on, and but by mere Accident less material; it would appear manifestly impossible to rear up a negative Proof upon the mere Defects and Slips of Memory which spring from the common Frailty of Human Nature.

And yet the Pursuers affect to lay it down, that the whole Evidence of the Relation which *La Marre* had to the Delivery of Lady *Jane*, must consist in these Inaccuracies produced by the irregular and partial Examination which they *chose* to bring him under. And it seems they were Masters to chuse upon what solid Foundation; but with what Regard to Justice, or Common Sense and Experience, they have not thought fit to demonstrate.

Upon this Ground they set themselves to argue with great Form and Solemnity, that the *Pierre La Marre* whom they have created out of the broken Memory of a much injured old Man, cannot, consistently with the rest of the Evidence, have been the Man-midwife of Lady *Jane*; though it seems strange, that if the rest of the Evidence falsifies Sir *John*, that should not be accepted for Truth, and so *Vice versâ*.

Upon this Ground they proceed to insist, that giving up these Articles of Sir *John*'s Testimony for inaccurate, is not only to destroy his Credit as a Witness, but to cut off all the Attention which would otherwise be due to his Acknowledgment of Mr. *Douglas*, his Treatment of him, the Acceptation he has with the World accordingly, and all which in Estimation of Law goes to constitute the Possession of a Man's State.

Strange, indeed, that the Weakness, or if it were so, the Wickedness of the Parent should dissolve the Bond of Relation between him and his Son! If he had suffered infamous Punishment for an infamous *Crimen falsi*, Mr. *Douglas* must have still undergone the Mortification of looking up to an infamous Parent; for the Rule of Justice, which has obtained in every Age, in every Country, and is founded upon obvious Principles of general Expedience and Policy, would dwindle all away if, instead of standing as a fixed Principle to govern all Cases, it should depend upon the accidental Imputations upon the Conduct or Character of the Parents.

If those who impeach a Man's Possession of his State attempt to bring demonstrative Evidence of his being born in a different Condition; such a Parent might, according to the Case put before, be repelled; or if his Reputation were slurred, would doubtless be received as a suspected Witness against whatever Testimony could be adduced on the other Side: But *the Possession of State*, under whatever Parent, must stand upon that general Bottom which all Possessions stand upon in Law, till the Causes of Eviction are made out in Evidence.

In this Instance it will be a singular Hardship to the Defender, if Sir *John*'s Evidence should either be repelled or held for suspected.---It ought in Justice to be received with only such Allowances as his great Infirmities from Age, Sickness, and Misfortune, naturally call for.—If positive Proof were necessary to the Defender upon this Head, the Delivery of Lady *Jane*, and

all

all the Circumſtances of it as they have alledged, are poſitively proved, either with or without Sir *John*; for Whoever will compare the reſt of the Evidence with Sir *John*'s Declaration, will ſee abundant Reaſon to conclude that all the Witneſſes ſpeak of the ſame Perſon, with more or leſs Perſpicuity and Preciſion, according to their different Powers of Memory and Opportunities of Knowledge; and that the Circumſtance miſapplied in Point of Time and Place was but one of many ſuch Accidents ſpringing from meer Infirmity, and has the ſame Title with them to be thought Innocent. But if the Rules of Juſtice, as they have hitherto obtained, deſerve any Regard, poſitive Proof is the Province undertaken by thoſe who go about to impeach a Man's Poſſeſſion of his State.---The Defender's Province is to repel the Attack when made.

Upon this Occaſion he hopes it will be found, 1. That the Purſuers have brought no Evidence which goes any Way to prove that he actually was or neceſſarily muſt have been in any other Condition than that which he now poſſeſſes. 2. That if ſo much were neceſſary, the real Hiſtory and Circumſtances of his Birth have been proved by as full a Body of concurrent Teſtimony as Juſtice could hope or require for eſtabliſhing thoſe Facts, after ſuch a Length of Time, and the accidental Death of ſo many Perſons appealed to for the Truth of them.

PART V. BOOK III.

Objections to LE BRUN conſidered.

CHAP. I.

Of the Means uſed to diſcover Mad. Le Brun.

THE Purſuers in the next Place inſiſt, That no Perſon of the Name of *Le Brun*, in whoſe Houſe Lady *Jane* could be brought to-bed, exiſted in *Paris* in the Year 1748.—1. Becauſe, if ſhe had exiſted, the *Monitoire* which was publiſhed, and the Anxiety which both Parties beſtowed in Queſt of her, muſt have diſcovered her. 2. If ſhe had lett ſuch Lodgings as would accommodate Lady *Jane*, ſhe muſt have been found in the Records of *Police*. 3. That if ſhe had poſſeſſed any Houſe whatever, ſhe muſt have been found in the Records of *Capitation*; and that as ſhe does not appear in any of theſe Rolls, ſhe muſt have been an ideal Perſon.—In anſwering each of theſe Objections, the Defender will demonſtrate that the *Monitoire*, the Records of *Police*, and of *Capitation*, go no Way to prove her Non-Exiſtence; but that a Perſon of this Name and connected with *La Marre* did actually exiſt at *Paris*, at the Time in Queſtion.

The firſt Argument that no ſuch Perſon as Mad. *Le Brun* exiſted, is a Search made by the Purſuers in 1763, to no Purpoſe.——*Charlier*, a *Huiſſier*, ſwears in 1765, that he enquired in a great many Streets, to diſcover a Woman of the Name of *Le Brun*, who kept an *Hotel garni* in 1748; and he afterwards adds, *ou Chambre garnie, ou qui donna à manger*, without being able to find her; and it was no Wonder, becauſe his Search was expreſly confined to a Claſs of People to which ſhe did not belong.—Had the Purſuers been willing to find her, the Enquiry would have been general, and not confined to this or that Claſs, in which they had no Reaſon to hope for Succeſs; and which appears rather like an Enquiry made to furniſh an Argument in a fraudulent Proceſs, in which they had no Contradictor, than to diſcover the Mad. *Le Brun* in Queſtion, which they moſt certainly never meant, or intended to do.

Second, They ſay, that if Mad. *Le Brun* had exiſted, the *Monitoire* would have brought her forth, becauſe the *Monitoire* muſt have been ſeen by all the World.—It was indeed ſeen by a great many, and by too many for the Honour of the Purſuers.—It is the moſt ſhameful Proſtitution of Authority this Age has as yet furniſhed.—Had the *Monitoire* contained a general Invitation to all who knew any Thing of the Caſe of *La Marre* and *Le Brun*, on the one Hand, and of *Enlevements* of Children on the other, it might have been the Means of making uſeful Diſcoveries, and might have diſcovered Mad. *Le Brun*, unleſs the Purſuers had, before the Publication of the *Monitoire*, with the Aid of *François La Marre*, found her out, and taken effectual Methods to prevent her Appearance. But the *Monitoire* never could make a Diſcovery in Favour of the Defender; for the Revelations are taken privately, ſent by the *Curés* to the *Procureur General*, with the ſame Secrecy, and the Names and Deſignations of the Perſons who reveal are ſent to the Purſuers only, and carefully concealed from the Defender; ſo that if Mad. *Le Brun* has made a Revelation, the Purſuers only could come to the Knowledge of it:

But the *Monitoire* expreſly affirms, that the pretended Delivery at her Houſe on the 10th of *July* was an Impoſture *demaſquée*.

Thus the *Monitoire*, inſtead of furniſhing a Proof of Mad. *Le Brun*'s Non-Exiſtence, proves no more than that if ſhe did exiſt when the *Monitoire* was publiſhed; and if ſhe ſaw it, and was not already ſecreted by the Purſuers; ſhe would not probably have appeared, to expoſe herſelf to be treated as an Accomplice in the *Impoſture demaſquée*. Or, it is highly probable, that it might not occur to her, that the Story related to the Lady who was delivered in her Houſe, whoſe Quality ſhe very probably did not know at the Time, or from whence the Lady came. Or ſhe might have died, or left the Place, long before the Publication of the *Monitoire*; ſo that, in no View, was it calculated to diſcover any Thing to the Defender.

In the next Place, the Purſuers ſay, that if any Perſon could have been found out to perſonate Lady *Jane*'s Landlady, the Defender's Agents have been very diligent in uſing every poſſible Means (though ſome not very juſtifiable) for that Purpoſe.—That a remarkable Inſtance
D. P. 547. F. of this occurred in a Perſon going to St. *Germain*, and informing one Mad. *Le Brun*, an Innkeeper's Wife, that a foreign Lady had been delivered in the Houſe of Mad. *Le Brun*: That ſhe had left a Legacy of 10,000 Livres to her Keeper; and that if ſhe could prove that ſhe was the Keeper, he would give her that Money.

As this was ſaid, the Defender will juſt ſtate the Evidence of the Fact, and ſubmit, whether this Woman has not, like *François La Marre*, been prevailed upon, by ſome undue Means, to ſuppreſs the Truth at the Expence of wilful Perjury.

When Mad. *Le Brun*, at St. *Germain*, was firſt ſpoke to on this Affair, ſhe ſaid, that one *Fontaine*, a Midwife, had told her, that a foreign Lady had been delivered of *Twins*, ſixteen Years before the Year 1764, in the Houſe of *one Le Brun*, and, as ſhe thought, by one *La Marre*.---On this, three *Britiſh* Gentlemen, of known Honour, went to St. *Germain* to converſe with her; to
—— 548. E. whom ſhe repeated the above Circumſtances.---Again, the Defender's Agent converſed with her
—— 551. G. in Preſence of three diſintereſted Perſons, to whom ſhe repeated the ſame Circumſtances, only three Days before her Examination.—When ſhe was examined, ſhe denied that ever *Fontaine* had
—— 546. D. told her that a foreign Lady had been delivered *of Twins*, in the Houſe of a Perſon of the Name of *Le Brun*, or by a Perſon of the Name *of La Marre*. She ſwore ſhe had never ſaid ſo, and that it was the Perſon who firſt ſpoke to her who told her theſe Circumſtances; and that he told her he would give her 10,000 Livres, if ſhe could prove herſelf the Perſon in whoſe Houſe the Lady
—— 548. E. had been delivered. In Oppoſition to this, two Perſons have pointedly ſwore to a very different
—— 551. G. Account given by her only a few Days before her Examination: So that the Whole of this Diſpute
P.P. *439.*H. comes to this Iſſue,---Whether it is more probable that this Woman has, in Imitation of *François La Marre* and *Gilles*, ſwore falſely, in denying what ſhe repeatedly told to ſo many different People;---or that the Defender's Agents called her as a Witneſs on his Part, knowing her total Ignorance of the Affair; and that two Perſons of unimpeached Characters have perjured themſelves, in depoſing that ſhe told Circumſtances which ſhe never mentioned?

CHAP. II.

Of the Records of Police.

P. P. 924. F. THE next Ground on which the Non-exiſtence of Mad. *Le Brun* is founded, is the Books of Police. The Purſuers ſay, That the Books of Police contain a Liſt of all the *Hotels garnies* and *Chambres garnies*, with the Names of thoſe who keep them. They are very regular and exact: They were made up every four Months, in 1748; and the Emoluments of the Officers depended upon their Accuracy in making up the Liſt. It is ſigned by the Lieutenant-General of Police, and authenticated by the Syndic of the Company of Inſpectors of Police. The Purſuers examined this Liſt, and they did not find in it any Perſon, of the Name of *Le Brun*, keeping an *Hotel*, or *Chambres garnies*, in 1748.

How far any found Concluſion can be drawn from this Circumſtance, admitting it in its full Latitude, may be doubted; becauſe, notwithſtanding the Care of the Officers, and their Motives for Exactneſs, there might have been a Perſon or Perſons, of the Name of *Le Brun*, keeping *Hotels garnies*, &c. though not contained in the Liſt.---There are Inſtances in Proof of People who lett Lodgings, and who notwithſtanding are not recorded in the Police Rolls; and therefore, if the Purſuers had made out what they have aukwardly attempted, that, by the Deſcriptions of Sir *John*
D. P. 631. A. *Stewart* and Mrs. *Hewit*, the Houſe in which Lady *Jane* was delivered was an *Hotel garni*, which ought to have been entered in the Police Rolls, yet the Argument would come far ſhort of their boaſted Infallibility.

But

But the Deſcription of the Houſe given by Sir *John* and Mrs. *Hewit*, does in no Degree ſupport the Purſuers Argument. The Whole of it reſolves into a poor Play on the Words *lodged and Lodging*. Sir *John* and Mrs. *Hewit* talk of *changing their Lodging*, *of lodging with Mad.* Le Brun, *of a Woman-Lodger*, *&c.* And this is made an Argument to prove Mad. *Le Brun*'s a common *Lodging Houſe*, like *Michel*'s, or any other of that Kind in *Paris*.

In this Agument the Purſuers ſeem to have overlooked two very obvious Things. The firſt is, That a common Lodging-Houſe does not differ, in the *Form*, from a Houſe in which Lodgings are not commonly lett, but in the *Uſe*. The ſecond is, That whether a Perſon inhabits a common Lodging-Houſe or another, he can expreſs his Relation to that Houſe in no other Way than by the Term *Lodging*.

It is very certain that Sir *John* and Mrs. *Hewit* never knew the Diſtinction made by the Police between an *Hotel garni* and a *Maiſon particuliere*. The Family *put up* at *Godefroi*'s, *an Inn*; *lived* at Mad. *Le Brun*'s, ſuppoſing it a *private Houſe*; and *lodged* at *Michel*'s, an *Hotel garni*. But they confound all theſe different Modes of Habitation, and call them all *Lodging*. And yet certainly there is a more ſenſible Difference between an Inn and a Lodging-Houſe, than between a Lodging-Houſe and a private Houſe.

Another Circumſtance to prove *Le Brun*'s a Lodging-Houſe is, the Woman Lodger aſſerted to have been preſent at the Delivery. Whether this Woman was really a Lodger with *Le Brun*, lies entirely on the Accuracy and Preciſion of Mrs. *Hewit*'s Expreſſion: And it is left entirely to Conjecture, whether ſhe might not have lived in her own Apartment under the ſame Roof, and entering at the ſame Door with Mad. *Le Brun*. Every Body who knows *Paris*, knows that the middling People live in Apartments: Moſt Houſes contain two of theſe Apartments on a Floor, ſome three or four. The Inhabitants of theſe live amongſt themſelves with ſo much Familiarity, that a Stranger muſt know the Ground very well, to diſtinguiſh thoſe of the Family from thoſe who are not. This was not, moſt certainly, the Caſe of Sir *John Stewart* and Mrs. *Hewit*; the Inattention of the one, and the utter Ignorance of every Thing *French* of the other, may account for the Miſtake, if it is one; and Mrs. *Hewit* ſays expreſsly, that ſhe did not know in what Part of the Houſe her Apartments were.

A third Circumſtance from which it is inferred to be a Lodging-Houſe is, that Mrs. *Hewit* ſwears, when at *Le Brun*'s, and afterwards at *Michel*'s, the Victuals were furniſhed by the reſpective Houſes. Mrs. *Hewit* is allowed to be under an innocent Miſtake, in ſo far as relates to *Michel*; becauſe they were provided by a *Traiteur*. She could have no Motive to diſguiſe either the one or the other; and as it is demonſtrated that ſhe erred in the one, her Error in the other is abundantly obvious.

But it is admitted, that any Perſon may receive ſick People, or Women to lie-in, in their Houſe for *Hire*, without falling within the Denomination of a Letter of Lodgings.—The Vigilance of the moſt arbitrary Government could not but admit an Exception ſo reaſonable; and the natural Courteſy of the *French* Nation could not but extend it even farther than was meant by the Law.—Hence it occurred, that *Le Brun* might have kept a Houſe of this Kind, in which Lady *Jane* was delivered.

The Purſuers ſay, but without Evidence, that the Houſes where ſuch People are taken in, and exempted from Obſervance of the Rules of Police, are, in general, of bad Accommodation, mean, and unfit for the Reception of Lady *Jane Douglas*. That may be true in general; but if it proves any Thing, it alſo proves, that a Stage-Coach, crowded with Servants and Country Notaries, was a very unfit Vehicle for Lady *Jane*; and yet ſhe made Uſe of it from *Sedan* to *Rheims*, and from thence to *Paris*. It proves that ſhe did not lodge at *Michel*'s, which was little better, if at all better, than *Le Brun*'s; and, above all, it proves that ſhe never went in a *Scotch* Ship from *London* to *Leith*, or in a Stage-Coach from *Edinburgh* to *London*; with many other Circumſtances under which her Pride of Blood ſtooped to the Neceſſity of the Times.

Nothing can be drawn from an Argument of this Kind; and all the Structure reared by the Purſuers upon it, is a poor Begging of the Queſtion.—Sir *John* and Lady *Jane* were Strangers, not come to *Paris* to make a Figure, but on an Occaſion that required Quiet and Retirement. Above all, *Godefroi*'s was an improper Place in every Senſe, but chiefly, from the Hurry and Noiſe of an Inn, frequented moſtly by People in low Trade. It was, in Point of Accommodation, rather below *Michel*'s; and from all that has been learnt of *Le Brun*'s, it does not appear to have been worſe than the one or the other.

The Purſuers ſuppoſe that *Le Brun*'s muſt have been a Lodging-Houſe, otherwiſe Sir *John Stewart* and Mrs. *Hewit* could not have been admitted to lodge in it. It is not a poſſible Caſe, that the Law could permit any Perſon to receive a Woman for the Purpoſe of lying-in in his

Houſe, without permitting him at the ſame Time to receive her Huſband and her neceſſary Companion.

There only remains to conjecture who recommended *Le Brun* to Sir *John*. He himſelf ſays, *he believes it might have been Godefroi*'s *People*; and Mrs. *Hewit* ſays, *that Sir* John *got the Lodging*. The Purſuers, as uſual, take hold of this, and conclude that the *Accoucheur* had no Hand in recommending *Le Brun*, and that there was no Connection between them; and, as uſual, they ſtrain the Expreſſion, ſubſtituting *Godefroi* himſelf in the Place of *Godefroi*'s People.

There is no Difficulty in ſuppoſing, upon the Proof of the Connection between *La Marre* and *Le Brun*, that ſhe was a Perſon patronized and encouraged by him; that ſhe had a decent Apartment, and was willing to embrace an Occaſion of turning it to a little Account, without running any Riſque; and that *La Marre*, on his Part, ſerved her, by recommending People, as the Occaſion offered. But, as her Apartment was hardly good enough on this Occaſion, he might not chuſe to propoſe it directly; and therefore he might have deſired ſome of *Godefroi*'s People to do it for him; or he may have recommended her to Sir *John* directly, as he ſpeaks uncertainly of her being recommended by *Godefroi*'s People.

CHAP. III.

Records of Capitation.

THE Purſuers next appeal to the Capitation-Rolls for Proof of the Non-exiſtence of Mad. *Le Brun*.—Here again, they have Occaſion to extol the Attention and Exactitude of the *French* Government; and the Defender will admit that the Capitation-Rolls are very extenſive; but the Argument from them is much more fallible than that from the Police-Books: For admitting them to be made up with a more than human Exactneſs, the legal Exceptions are too broad to build any Thing on the general Rule. For Example, the *Swiſs* and *Genevois* are excepted from the Rolls of
D. P. 252. C. Capitation.---They are, at the moſt moderate Computation, ſuppoſed to be 20,000, making the 35th Part of the Inhabitants of *Paris*, which is ſaid to contain 700,000 Souls.

— 225. C. After them come all Ambaſſadors, Envoys, and other Miniſters, foreign and domeſtic, with their Secretaries and Servants.—This Article of Exemption would be very conſiderable, even in the Terms of Law; but when the Abuſe, too common in ſuch Caſes, is attended to, it will add greatly to the Account.

— 210. D. 3. Poor Widows are not included in the Rolls.

— 210. B. 4. No Servants, or Journeymen Tradeſmen, are included by Name, but are taxed by Numbers in their Maſter's Family, even though they have ſeparate Houſes for their Wives and Children, in which they may carry on what Profeſſion they pleaſe, without appearing in any Capitation-Record.

— 225. D. 5. The Members belonging to Corporations are enrolled in particular Liſts of the Community, pay their Tax to the Community, and it is paid by the Wardens to the Tax-Gatherers: Now it happens, that no Roll of any Community in *Paris*, preceding 1750, exiſts.

— 209. F. 6. The Capitation-Rolls are made up every Year, at the End of the Year; and thoſe who inhabit *Paris*, in the intermediate Period, are not, nor can be, on the Capitation-Rolls.

— 211. F. &c. 7. There is a Proof brought by fourteen Witneſſes that the Revenue is defrauded, and many People eſcape the Capitation-Rolls.

Whatever Reſtriction theſe Exceptions may be taken under, they deſtroy the Purſuers Argument, and render it the moſt fallible of all fallible Caſes.—Had Madam *Le Brun* been a *Swiſſeſſe*, or a *Genevoiſe*, or Wife, or Widow of a Man belonging to *Swiſs* or *Geneva*, or of a *French* or foreign Miniſter, or protected by any of theſe; or the Wife of a *Valet de Chambre*, or any other Servant to a Man of Fortune, or of a Member of any of the Corporations in *Paris*, or under any of the Exceptions mentioned, ſhe would not have appeared in the Capitation-Rolls.

But, ſay the Purſuers, ſhe could not be in the Exception of the *Swiſs* or *Genevois*, nor in the Retinue of a Miniſter, becauſe neither Sir *John* nor Mrs. *Hewit* ſay ſo; on the contrary, they indicate her to have been a *French* Woman, becauſe of her black Complexion, ſeeing few of the *French* Women are fair.—Ignorance herſelf could not have formed an Argument of equal Abſurdity. It ſuppoſes, that Sir *John* ſhould have enquired the Hiſtory of this Woman and her Huſband, in the thirteen Days he lived with her, and in the Hurry he then may be ſuppoſed to be.---It ſuppoſes that he ſhould have kept it in his Remembrance for ſuch a Number of Years; and that Mrs. *Hewit*, who had no Method of communicating her Ideas, muſt have done the ſame. It ſuppoſes that a *French* Woman cannot marry a *Swiſs*, and that Nobody knows what a *Swiſs* is.—From *Geneva* to *Baſle*, including the whole *Pais de Vaud*, there is no Difference between the *French* and

and the *Swiſs* in Complection, in Manners, in Language.---From that Country, the Inhabitants flock to *Paris*, allured by the great Privileges they enjoy above the Natives; of which the Exemption from Taxes is one, and that from the high Duties which the City of *Paris* impoſes on imported Proviſions of all Kinds, another.---But this Argument is too frivolous to anſwer.

The Purſuers next ſay, that, however, the Rolls of the Corporation in 1748 are loſt, yet, that the Defender might have found out whether Madam *Le Brun* had ever belonged to theſe Corporations, by a Liſt of the Maſters entered in each Corporation kept by the *Procureur de Roi*, and another kept by the *Garde* or *Jure* of the Corporation.

This is a Miſtake of their Place in the Argument.---The Defender would have been very glad to produce Mad. *Le Brun*, and the Search he made for her will be afterwards explained; but, in the mean Time, why did not the Purſuers, who aſſerted that ſhe was a fictitious Perſon, produce theſe Liſts of the *Procureur de Roi*, &c. to ſupport their Capitation-Rolls, and take off by that Means, from the Width of the Exceptions to their infallible Rule?

The Witneſſes examined to the Fraud of the Capitation-Rolls prove the Fact, which, in the Nature of Things, cannot be otherwiſe: And it is to no Purpoſe to ſay, they are Low People; for who other but Low People would defraud the Revenue, or at leaſt own it?

The Purſuers next ſupport the Capitation-Rolls by a mean ludicrous Argument. They ſay, they have been *offered* as Evidence.---If they had been *admitted* as Evidence, Something might be concluded: But, though ſupported by the Liſt of the Army, the Parliament of *Paris* refuſed to hold them as Evidence in the Caſe of *Rougemont*.

CHAP. IV.

Perſons of the Name of Le Brun *in the Records of Capitation.*

IT is now Time to examine the Contents of the Capitation-Rolls.---The Rolls made up at the End of the Year 1748, mention five Perſons of the Name of *Le Brun*; among whom, there are two who fall with great Probability within the Deſcription of the Perſon in Queſtion.---When the Capitation-Rolls were examined, the Defender employed two Gentlemen of Reputation, Mr. *Maſſon* and Mr. *Cauville*, to viſit the Houſes where any Perſon of the Name of *Le Brun* had lived in 1748. They reported, 1. "A Mad. *Le Brun*, *Rue St. Dominique*, qui faiſoit des Me- D. P. 575. C. —— 571. D.
"nages, gardoit des Malades, & qu'avoit une Fille, qui pouvoit être agée de 15 ou 16 Ans en
"1748." This Mad. *Le Brun* and her Daughter are dead, and the Houſe is pulled down. 2. —— 571. G.
"Mad. *Le Brun*, *Rue de la Comedie*, vivant de ſon Bien, faiſoit des Menages & gardoit des Ma- —— 576. G.
"lades, pouvoit être agée de 65 à 66 Ans, en 1765; & avoit une Fille, qui pouvoit avoir 35 à 36
"Ans actuellement; mais cette Fille eſt morte."

Comparing the Circumſtances of theſe Perſons, with the Deſcription given of Madam *Le Brun* by Sir *John Stewart* and Mrs. *Hewit*, the one or the other might be the Perſon in whoſe Houſe Lady *Jane* was delivered.---1. Both Houſes are in the *Fauxbourg St. Germain*; both Women were *Gardes malades*, and had Daughters arrived at the Age of Women in the Year 1748; and it is remarkable, that a Widow is entered in the Records of Capitation as living in the Houſe with Mad. *Le Brun*, *Rue de la Comedie*. And, 2. Mrs. *Hewit*'s Depoſition, wherein ſhe ſays, that Lady *Jane* was attended by the People of the Houſe, and her writing to *Iſabel Walker* that ſhe had a ſick Nurſe attending her, is a pretty good Deſcription of a *Garde malade*. Here it is ſcarce neceſſary to explain, that a *Garde malade* is not preciſely what is called in *England* a ſick Nurſe; ſhe not only attends People herſelf, but accommodates them with Lodging, and hires occaſionally ſick Nurſes to aſſiſt her, who remain with her only during their Employment.

And beſides theſe, Doctor *Gibſon*, Phyſician at *Glaſgow*, knew a Perſon of the Name of *Le* D. P. 394. G.
Brun, in the *Fauxbourg St. Germain* in *Paris*, in the Year 1745; who had a Houſe in which Women were delivered, and where he himſelf practiſed Midwifery.

The Defender is not obliged to ſhow if any of theſe Perſons, or which of them, was the Mad. *Le Brun* in whoſe Houſe Lady *Jane* was actually delivered. It is fully ſufficient for him to ſhow, that any of them may have been the Landlady of Lady *Jane*: And therefore the Purſuers again miſtake their Place, when they require him to fix on the one or the other.---It is their Buſineſs to demonſtrate, that neither the one nor the other could be the Perſon pointed to in the poſitive Evidence of the Delivery. It is not the Defender's to go farther than to detect the Fallacies and Gloſſes, by which they have attempted to deprive him of his Eſtate and Birthright.

Of the ſame Nature is another of their captious Arguments. It appears from the Report and Depoſition of Mr. *Maſſon*, that a Madame *Loq* had told him, that *Le Brun*, *Rue de la Comedie*, was yet alive, and that ſhe had ſeen her within three Weeks, or a Month. On this the Purſuers demand, Why the Defender did not find her out, if ſhe was the Perſon who delivered Lady

Jane?

Jane?---The Anſwer to this is, That the Defender made every poſſible Enquiry to find her out to no Purpoſe. But why did not the Purſuers find out this Mad. *Le Brur*, if ſhe was *not* the Perſon who delivered Lady *Jane?* The Anſwer muſt be concluſive againſt them, and it is impoſſible to evade the Concluſion by fair Argument.

The Truth is, that the Purſuers Agent knew before the Commencement of this Suit, not only of the Exiſtence of Mad. *Le Brun*, but of her Connection with *La Marre:* This was again repeated to him by *La Marre*'s Brother, who was thereafter prevailed upon to ſuppreſs the Accounts he originally gave. It is natural to imagine he would not neglect the Information. Therefore, it may be fairly concluded, that he did enquire after Mad. *Le Brun*; but the Reſult of that Enquiry is covered with impenetrable Darkneſs. Surely, if ſhe was the Perſon in whoſe Houſe Lady *Jane* was delivered, it is ſtrange, that no Enquiry could ever diſcover what is become of her ſince; if ſhe was not, it is ſtill more ſtrange, that the Purſuers have not ſupported their Negation of Madam *Le Brun*'s Exiſtence by producing her.

That Madam *Le Brun* has diſappeared is certain; and that the Defender could have no Intereſt to put her out of the Way is no leſs ſo; becauſe, it would not hurt his Caſe at all, though ſhe ſhould know no more of the Matter than the other *Le Bruns* in the Capitation-Rolls: But if ſhe was the Perſon in whoſe Houſe Lady *Jane* was delivered, it was very material to the Purſuers to keep her out of the Way.

The Purſuers argue next, that none of the two *Le Bruns* in the Capitation-Rolls, could apply to the Caſe, becauſe neither of them had Servants; and Sir *John* and Mrs. *Hewit* mention a Maid, that attended Lady *Jane*.---Theſe People, who attended Lady *Jane*, were employed by Mad. *Le Brun* for that Purpoſe; and Sir *John* and Mrs. *Hewit* could ſpeak of them in no other Manner: But the Obſervation is trifling; they were hired for the Purpoſe; and when Lady *Jane* had recovered they were paid off and diſcharged; conſequently, could not be in the Records of Capitation as Servants to Mad. *Le Brun*.

From the whole Evidence on this Head the following Propoſitions reſult: 1. That in the Interval between the Reſidence in *Godefroi*'s and that in *Michel*'s, Lady *Jane*, &c. muſt have reſided thirteen Days in ſome Houſe; and as there is no Evidence of them, during this Period, in the Regiſters of the Police, it follows, that they moſt probably lodged in ſome Houſe not ſubject to the Regulations of Police.

2. That ſundry Perſons whoſe Reſidence in *Paris* in the Year 1748, is proved by the Records of Capitation, cannot now be diſcovered, any more than the Mad. *Le Brun* in Queſtion; ſo that her not being found, is no Proof of her Non-exiſtence.

3. There is Evidence from the Capitation-Rolls, and from Doctor *Gibſon*'s Oath, of three Women named *Le Brun*, all *Gardes malades* in the *Fauxbourg St. Germain*; two of whom had Daughters, and any of them may have been the Perſon in whoſe Houſe Lady *Jane* was delivered.

4. There is full, direct, and credible Teſtimony, that there was in *Paris* in 1748 a Woman of the Name of *Le Brun*, a *Garde malade*, or Something near it, who was intimately connected with an *Accoucheur*, named *Pierre La Marre*.

5. There is great Reaſon to believe that one of the Women, named *Le Brun*, mentioned in the Capitation-Rolls, did live in *Paris* when this Proceſs began. By what Accident ſhe diſappeared is not known; but from the Conduct of *François La Marre*, he ſeems to have been a proper Inſtrument in the Hands of the Perſon who dictated Mr. *Duruiſſeau*'s Depoſition, to perſuade that Woman to retire where ſhe might never be found.

The Reſult of the Whole is, That the Purſuers Proof is not only inconcluſive and eluſory, but there is better Evidence of the Exiſtence of a Madam *Le Brun* applying to this Caſe, than of the Negative Propoſition which the Purſuers undertook, and were bound to make out by Proof.

PART V. BOOK IV.

Objections to GARNIER and SHOLTO conſidered.

IT has been obſerved, that it was Meſſieurs *Menager* and *Gilles* who firſt ſuggeſted the Idea of enquiring for the Nurſe of *Sholto* about *Belleville* and *Menilmontant*.---The Manner in which *Garnier* was diſcovered, and the Evidence which ſhe and her Huſband and their Neighbour *Boucault* have given, has been already fully ſtated.---It only remains to examine ſuch of the Purſuers

ſuers Obſervations upon the Application of it to the Defender's Twin-Brother *Sholto*, as appear to be worth Examination.---On this Head the Purſuers have, in the firſt Place, inſiſted, that there are ſuch Diſcrepancies betwixt the Accounts of the Child nurſed by *Garnier* and the Defender's Brother *Sholto*, as prove, that they cannot relate to the ſame Perſon.---But, ſenſible that theſe will not bear them out, and that ſuch muſt have happened in a Detail relating to a remote Period, they attempt to prove that theſe Witneſſes are all perjured; and the ſingle Reaſon on which this Charge is founded, is no other, than that if they have not ſworn falſly, the Conſequence is unavoidable, that *Garnier* was the Nurſe of *Sholto*.

CHAP. I.

Of Garnier's *Place of Reſidence.*

THE firſt Objection is, That the Place of Mad. *Garnier*'s Abode is contradictory to that given by Sir *John Stewart* of *Sholto*'s Nurſe.---Sir *John* ſays, that the Child was ſent to a Village on the *Amiens* Road, about two or three Leagues from *Paris*; whereas *Garnier* nurſed the Child in Queſtion at the *Haute-borne*, which is not upon the *Amiens* Road, and within a Quarter of a League of *Paris*. Decl. 9. B.

In the Circumſtances and at the advanced Age in which Sir *John Stewart* was examined, his miſtaking the particular Place at which his Child was ſent to Nurſe, cannot be urged as a Proof that he was not nurſed at the *Haute-borne ſur le Chemin de Menilmontant*.---In his ſubſequent Depoſition he ſays, that the Village where the Child was nurſed was but a little Diſtance from *Paris*. ---In 1748 and 1749, when they were at *Rheims*, it was uniformly given out that the Child was at Nurſe in the Neighbourhood of *Paris*; and ſome of the Witneſſes recollect that *Menilmontant* was named as the Place; others, that it begun with an *M.* In *October* 1748, Lady *Jane* wrote to Mrs. *Hepburn*, that Sir *John* was gone to *Paris* to ſee *Sholto*. --- Lady *Wigton* was deſired to go and ſee *Sholto* when ſhe went to *Paris*.---Sir *John* told Baron *Macelligot* his Child was at Nurſe, at or in the Neighbourhood of *Paris*.—The Nurſe *Mangin*, Mad. *Mailleſer*, and others, were told that he was left at Nurſe in the Neighbourhood of *Paris*, which never could have been ſaid if he had been at two or three Leagues Diſtance.---So that Sir *John*'s firſt miſtaking the Place where the Child was at Nurſe, and which he afterwards corrected, can be of no ſort of Conſequence. P. P. 246. B. D. P. 358. F. —— 360. B. —— 610. A. —— 605. B. Serv. 32. E. D. P. 345. C.

It is further objected, that Mad. *Garnier* did not live at *Menilmontant*, but at *Haute-borne*; ſo that if that Place was mentioned, as ſome of the Witneſſes pretend to recollect, he could not be the Child nurſed by *Garnier*.

This Objection will ſoon be explained.---There are ſtraggling Houſes all the Way from *Paris* to *Menilmontant*; each little Cluſter has its particular Name; and to evite the Miſtakes which the Obſcurity of theſe Names might occaſion, the Deſcription muſt be taken from ſome Place more publickly known, to which the leſs remarkable ſeem, by their Situation, attached. The ſame Thing happens near all great Towns. *Menilmontant* is juſt above and in Sight of the *Haute-borne*, is univerſally called *Haute-borne ſur le Chemin de Menilmontant*, and is ſo *deſcribed* in many of the Depoſitions; ſo that there was no Impropriety in calling it *Menilmontant*; which is a conſiderable Village deſcriptive of that whole Environ of *Paris*.

CHAP. II.

Of Lady Jane's *not viſiting* Sholto.

THAT *Sholto* could not have been ſo near *Paris*, otherwiſe Lady *Jane* muſt have gone to ſee him, the more eſpecially as ſhe went abroad, and even to the Country, during her Stay at *Paris*.

This Objection depends wholly upon the Fact whether Lady *Jane* did go abroad during her Reſidence at *Paris*, and therefore has been already conſidered under a ſeparate Branch of this Caſe; and the Defender has ſhewn, that ſhe was not in Condition to make the Jaunts imputed to her: And it appears further, that Sir *John* was careful to conceal the Situation of the weakly Child from her, and would on that Account anxiouſly divert her from going to ſee him; and might, to amuſe her, pretend that the Child was at a greater Diſtance from *Paris* than he really was. Serv. p. 33. B. —— 35. B.

That Lord *Blantyre* ſaw him, and that Lady *Wigton* had an Addreſs to the Place where he was, and was requeſted to inform Lady *Jane* how he was, is already ſhewn.

The next Objection is, That Mrs. *Hewit* calls *Sholto*'s Nurſe a Farmer's Wife; whereas *Garnier*'s Huſband is a Quarrier.—All that Mrs. *Hewit* knew of the Matter was, that the Nurſe came from the Country: *Garnier* in Fact kept Cows: Hence ſhe naturally concluded her a Farmer's Wife. Serv. 34. C.

They

They object that the Accounts given by Sir *John* and Mrs. *Hewit* of the Manner in which the Nurſe was provided, are different from that given by *Garnier* of the Manner in which ſhe was
Serv. 34. D. hired to nurſe her Child.—For Example, Mrs. *Hewit*'s Letters to the Maids ſays, that Sir *John*
P. P. 255. C. and ſhe got the Nurſe: And in her Depoſition ſhe ſays, that next Day afrer Lady *Jane*'s Delivery, Sir *John* and *La Marre* went to the Country, and found out an extreme good Nurſe, whom they brought to *Paris* with them; but Sir *John* makes the Nurſe to have been got by *La Marre*.

Theſe Accounts are not inconſiſtent.---Sir *John* and Mrs. *Hewit* agree, that he was ſent out to Nurſe the Day after his Birth, by the Advice of *La Marre*, to a Nurſe of his recommending:---That by the ſame Advice he was ſent into the Country for freſh Air, being very weak.---Mrs. *Hewit*'s ſaying that the Nurſe was brought to *Paris*, and that Lady *Jane* preſſed her to continue and nurſe the Child in the Houſe, but that ſhe refuſed to leave her own Houſe, is a Miſtake, which has ariſen from what happened to the Defender:---In his Caſe a Nurſe (*Favre*) was brought to the Houſe; and, after ſtaying ſome Nights with them, inſiſted on being allowed to carry the Child home with her; which Lady *Jane* was averſe to, from what had happened to him at his former Nurſe's: And Mrs. *Hewit*, at the Diſtance of ſixteen Years, mentions this Fact, but applies it to the Nurſe of *Sholto* inſtead of *Archibald*; and this is all the Miſtake.---The Reaſon why the Surgeon adviſed *Sholto* to be ſent out to Nurſe, was his extreme Weakneſs, and that Country Air was neceſſary for him: This was mentioned in her Letter of the 22d of *July* to the Maids; and therefore they could never propoſe to a Woman to continue in *Paris* to nurſe a Child who was ordered to be ſent to the Country for Air.

P. P. 555. A. It is ſaid, that *Garnier* was beſpoke by *La Marre* before the Delivery of the Lady; and that Lady *Jane* would not allow a Nurſe to be beſpoke, becauſe ſhe did not know if ſhe ſhould bear a living Child.

This Idea, which may have come into Lady *Jane*'s Head at a melancholy Moment, certainly would not prevent *La Marre* from looking out for a Nurſe, upon ſeeing the Situation that Lady *Jane* was in; though from a total Want of the *Engliſh* Language, which was the only one that Mrs. *Hewit* underſtood, he could not tell her ſo; and Sir *John* would probably not give himſelf the Trouble to explain all the Converſations betwixt him and *La Marre* on ſuch Occaſions: And all that Mrs. *Hewit*'s Oath on this Subject can infer, is, that ſhe does not now remember that any Nurſe was beſpoke before Lady *Jane*'s Delivery; or that *La Marre* did not then tell her that there was.

The Purſuers next object to the Impropriety of ſending *Sholto*, a weak delicate Child, to the Nurſe in the Night by the Light of Torches; and that the Secrecy obſerved with reſpect to the Child was inconſiſtent with the Suppoſition of his being the youngeſt Son of Lady *Jane Douglas:* And that
Serv. 36. A. Mrs. *Hewit* has ſaid, that the Nurſe was preſſed to go along with the Child; whereas *Garnier* ſays that ſhe was not deſired to go with him.

In Anſwer to the firſt, it is not obvious that a Child carried in a Coach about Nine or Ten o'Clock in the Evening, well wrapped up, riſks any more than if carried in the Day-time; on the contrary, in the Heats of *July*, and the Climate of *Paris*, it is a proper and neceſſary Meaſure.

As to the Secrecy, it is hard to gueſs what the Purſuers mean. *Garnier* ſays, that ſhe was not told the Name of the Perſons to whom the Child belonged, but ſhe was never cautioned to any Secrecy; and to have told her the Name of the Parents would have availed nothing, becauſe ſhe could not have remembered their Names one Day:---And her not being told the Name of the Child affords a ſtrong preſumptive Proof, that he was the Son of Lady *Jane Douglas*, whoſe Child had been only ondoyed by the *Accoucheur*, and had got no Name.---She had an Addreſs to *La Marre*, which was every Thing neceſſary:---Had any Accident happened to *La Marre*, though ſhe did not know where to find the Parents of the Child, they knew where to find her.---The Inference of Secrecy, inferred from the Coach in which he was carried having a Flambeau, is too ridiculous to receive an Anſwer.

CHAP. III.

The Condition of the Child nurſed by Garnier, *and the Time at which he was nurſed.*

THE Purſuers next object, That the Condition the Child was in at the Time *Garnier* received him, as well as his State of Health while ſhe kept him, is different from the Account given of *Sholto*.

Inſtead of denoting a Difference, there is a remarkable Feature of Sameneſs. Sir *John Stewart* and
—— 12. C. Mrs. *Hewit* ſay the Child was ſo weak when born, that it was not expected he would live many
D. P. 554. C. Hours; and *Garnier* ſays, that when the Child was delivered to her, he was very weakly, and ſo delicate,

licate, that ſhe did not expect to be able to rear him :---How is it poſſible for different Perſons to expreſs the ſame Thing in more connected Terms ? The Expreſſion of Sir *John* and Mrs. *Hewit* may be a trifling Degree ſtronger than that of *Garnier* ; but that is more than accounted for by the different Impreſſions which People receive of the ſame Thing, the different Intereſt they take, and the different Activity of their Ideas ; but above all, from this, that the Child when delivered to *Garnier* had recovered the Fatigue of his Birth ; and it is well known that alone often kills a weakly Child.

But, ſay the Purſuers, *Garnier*'s Child was not ſick, and his Weakneſs proceeded from the ſingle Circumſtance of his being a Twin ; nor was he much ſick during all the Time ſhe kept him ---Has any Perſon ſaid that *Sholto* was ſick ; or can any Perſon diſtinguiſh between Sickneſs and Weakneſs in a new-born Child ?---The Whole of the Account given by *Garnier*, &c. of the Child's Health, compared with what Accounts the Parents gave from Time to Time of *Sholto*, muſt convince every judicious Perſon, that they are one and the ſame Child.

There is an Argument of Difference raiſed on the Manner in which the Child was taken away, becauſe Mrs. *Hewit* ſays, that the Nurſe brought the Child Home with Sir *John* and *La Marre*.--- Sir *John* ſays, that a Woman accompanied them with the Child, but does not remember whether it was the Nurſe ; and *Garnier* ſays, that *La Marre* came alone to take the Child away ; and *Boucault* adds, that *Garnier* did not accompany the Perſons who carried away the Child. P. P. 258. E. —— 555. F.

If all theſe Accounts were miſtaken, no earthly Conſequence could be drawn from it. The Thing is in itſelf ſo trifling, and ſo liable to Miſtake, that it is no Wonder after fifteen Years, the Witneſſes ſhould vary in it ; but they may all be reconciled on a very ſimple and natural Suppoſition --That when Sir *John* and *La Marre* went to bring the Child away---That they had a Woman with them---it matters not whom ; whether taken from the Houſe they ſet out from, or otherways, for the ſingle Purpoſe of holding the Child when taken from his Nurſe, till they came back to the Inn---That Sir *John*, to evite the Expoſtulations of a Nurſe from whom a Child is taken away, and probably the Payment of the extraordinary Gratification with which *La Marre* had flattered her, did not go into her Houſe ; but ſent *La Marre*.---Here is the Woman of Sir *John*'s Depoſition, and whom Mrs. *Hewit* took for the Nurſe---here is *La Marre* alone taking away the Child, according to *Garnier* ;—and here is *Garnier* left at Home, according to her and *Boucault*.

The Defect of Coincidence of Time is another Argument to prove that the Child nurſed by *Garnier* was another than *Sholto*.---It is reared on a Baſis ſo uncertain, ſo utterly void of Solidity and Preciſion, that it cannot ſuſtain the weakeſt Attack.---The Whole of it refers to an Epoch, *viz.* the 22d of *March* 1748. It ſtands in Evidence, that the Child in Queſtion was nurſed on the Milk of *Garnier*'s Son called *Jerome*.---The Pariſh Regiſter fixes *Jerome*'s Baptiſm to the 22d of *March*. *Garnier* the Wife depoſes, that ſhe cannot recollect at what Seaſon of the Year the Child was brought to her ; but ſhe knows that then *Jerome* was ſix Months, or ſix Months and a half old, not being able to tell preciſely.---She ſays alſo, ſhe ſuckled him ſeven or eight Days in her Houſe after ſhe got the Child, then ſhe ſent him to *Belleville*, where he remained fifteen Days or three Weeks, more or leſs ; from whence it follows, that when her ſaid Child *Jerome* returned from *Belleville* to her Houſe, and was entirely weaned, he was about ſix Months, or ſix Months and a half, and ſeven or eight Days, and fifteen Days, or three Weeks, more or leſs. D. P. 555. e. —— 975. c.

Garnier the Huſband ſays, that it was about the End of Summer, or Beginning of Harveſt, *ſome Months more or leſs*, that the Child was brought to his Houſe ; that he does not remember preciſely the Seaſon when the Child was given back, but believes it was about the Spring, *conſidering (attendu)* that it was about eighteen Months after having received it ; and when the Child was given to his Wife, their Son *Jerome* was about ſix Months old.---He ſays thereafter, that his Son *Jerome* was ſix Months fifteen Days old, more or leſs, when his Mother weaned him in order to take the ſaid Nurſling ; and that on this Occaſion *(i. e.* ſome Time after ſhe received the Twin Child) his Son *Jerome* was ſent to *Belleville*. D. P. 558. E. P. P. 971. F.

On this Evidence the Purſuers conclude, That the Child was not given to *Garnier* till *September* 1748, nor taken away till Spring 1750.

This Argument forms a Chain, one Link of which giving Way the Whole is deſtroyed ; but here every Link is cracked : 1ſt. The ſix Months given to *Jerome* when the Nurſling came, even if preciſely ſworn to, proceeds on no particular Cauſe of Knowledge to aſcertain the Epoch. It is no more than a Conjecture in a Matter of Date, which of all others is the moſt difficult to aſcertain by naked Memory ; and the Parents might eaſily have fallen into the Miſtake, by confounding the Time on which they received the Child with the Time their own Son returned from *Belleville*.---But they do not ſpeak with Certainty, as indeed they could not preciſely aſcertain the Age of their Son ; and their Evidence on this Head muſt bend to the unalterable Features of Reſemblance that are in other Reſpects between the Child they nurſed and *Sholto* ; and it would be a monſtrous Abſurdity to ſet up the Huſband *Garnier*'s rough Gueſs of *quelque Mois plus ou moins* againſt the whole other Circumſtances.

The Circumſtance of Torch-light is nothing; it is proved the Child came at nine or ten in the Evening, at which Hours Torch-light is as neceſſary in *Paris* in the Month of *July* as in the Month of *September*.

Nor is there any more in the ſuppoſed Improbability of *Garnier*'s Weaning her Son before he was ſix Months old. The Argument lies the other Way; for it is in Proof that ſhe wanted to ſuckle him together with her Nurſling; and that ſhe actually did ſo by Stealth for ſome Time: And it was only on the expreſs Prohibition of *La Marre* that ſhe was obliged to wean him. Now it is ſcarce probable ſhe would have done a Thing ſo contrary to the Practice of Nurſes, had her Child been ſix Months old.---And there was nothing extraordinary in her Weaning him at four Months, on Account of this Child, for whom ſhe was paid three Times the ordinary Wages of common Nurſes.

D. P. 554. B. — 558. E. — 561. B.

The next Point is the Time the Child remained at Nurſe. *Garnier* and her Huſband are poſitive it was eighteen Months. *Boucault* is as poſitive the Child remained with them ſixteen or ſeventeen Months at moſt.---This alſo is a Thing of naked Memory, and very eaſy to reconcile. The Nurſe and her Huſband would naturally compute by the Months they received for the Child: And as Nurſes are paid every four Weeks, or Lunar Months, they would naturally fall into that Supputation. And by the moſt accurate Account *Sholto* was taken from Nurſe on the ſecond Week of the eighteenth Lunar Month, from the 11th of *July* 1748.---On the other Hand, *Boucault*, who had not the Motive of Intereſt to direct her, followed the common Supputation.

This Miſtake, if it can be called one, has engaged *Garnier* the Huſband to advance the Epoch of the Child's being taken away till towards Spring 1750.---He expreſsly makes this Supputation in his Depoſition; and the Whole lies on his computing, at the End of fifteen Years, eighteen Solar Months for eighteen Lunar Months.

CHAP. IV.

Objections to the Teſtimony of Mad. Garnier.

THE Purſuers, after ſhewing, as they pretend, that the Story of the Child nurſed by *Garnier* cannot apply to *Sholto*—admit that it does apply; and attempt to ſap the Credit of the Witneſſes, by Arguments no leſs captious and frivolous than their Criticiſms on the Reſemblance. ---Indeed theſe Criticiſms ſupport the Credit of the Witneſſes; for the minute Differences and Contradiction from which they are drawn, though they fall far ſhort of dividing the Perſon of *Sholto* from the Perſon of the Child nurſed by *Garnier*, yet they do prove the artleſs Integrity of the Witneſſes, and that they were not in a Tale. And here it is remarkable, that the Purſuers, as in the Caſe of *Menager*, lay out their whole Labour to diſcredit the Teſtimony of Mad. *Garnier* alone, without impeaching that of her Huſband, and *Boucault* and *Rouſſelet*, who ſupport her in every Article.

It is ſuppoſed that *Garnier* was led to adapt the Story of her Nurſling to that of *Sholto* by the Proſpect of Advantage.—The Manner in which ſhe was diſcovered has been ſtated, and the Converſation ſhe had with *Rouſſelet*. She muſt have acted a ſtrange Part indeed, if ſhe had adopted a Story which did not belong to her, without the Knowledge of her Huſband, or any of her Neighbours: But her Conduct is natural, ſuppoſing that it did belong to her.---The firſt Remark was ſcarce out of her Mouth when ſhe reflected, and deſired not to be known.---Two or three Days after, when ſhe might have conſulted with her Huſband and Friends, *Rouſſelet* came to fetch her, by the Deſire of a Gentleman, named *Fleſſelles*, *Maître des Requêtes*. She remained in the ſame Mind, and would not go till Mr. *Fleſſelles* ſent his own Servant for her.---This is not the Conduct of a Perſon eager to catch at an Advantage.

The Suppoſition that *Garnier* took her Plan of adopting the Story from her Converſation with *Rouſſelet* is ſupported by no Evidence, and is forced and unnatural.---It ſuppoſes that an ignorant Country Woman would in an Inſtant perceive all the Combinations of ſuch a Story. It ſuppoſes a criminal Intention, without the Shadow of Evidence; and that *Rouſſelet* had related to her the
P. P. 982. B. minuteſt Circumſtances that paſſed between her and the *Curé*.---But *Rouſſelet* ſays no ſuch Thing.---She ſays indeed that *Garnier* did not mention to her *Pierre La Marre*, nor the Circumſtance of the Child's being a Twin.---But ſhe does not ſay that ſhe mentioned any of theſe Circumſtances to *Garnier*:---So that the Purſuers *Key*, as they call it, can open no Door to Falſhood. ---And *Rouſſelet* expreſsly ſays, that *Garnier* told her ſeveral Years before that, of the Child's belonging to Foreigners, and his not remaining in *Paris* when taken from her.

The Purſuers next ſay, it is incredible that ſhe, having ſeen *La Marre* ſo often, ſhould not be able to recollect his Age, Stature, or Figure:---That ſhe is contradicted by *Hircheman*, her Siſter-in-Law, in the Account ſhe gives of the Manner the Child was brought to her Houſe:---

That

That ſhe never told any Body the Child was a Twin ; and that no Body ever ſaw *La Marre* at her Houſe when he viſited her ; in which ſhe is contradicted by *Boucault*.

Mad. *Garnier*'s forgetting the Age and Figure of *La Marre* might ſeem extraordinary, if ſhe was the only Perſon who proves that *La Marre* brought her the Child ; but as it is certain, from the Depoſitions of her Huſband, and from Mad. *Boucault*'s, that *La Marre* was the Perſon who brought the Child to her, and paid his Months ; and that ſhe told *Rouſſelet*, long before this Proceſs began, that it was a Gentleman who brought her the Child : It ſeems of little Conſequence whether, at the Diſtance of ſeventeen Years, ſhe recollected his Age and Figure, or not. And thereare many Inſtances, in this Proceſs, of Witneſſes forgetting and giving contradictory Deſcriptions of People they once knew well. D. P. 565. B.

As to *Hircheman*'s not ſeeing *La Marre*, or knowing, or not remembering to have known, that the Child was a Twin---it is to be obſerved, that ſhe ſeems to know nothing at all of the Story beyond the Circumſtance of the Lady who came with the Child ; which may be eaſily reconciled to *Garnier*'s Account, if we ſuppoſe ſhe came to the Door after *La Marre* and the Child were gone into the Houſe, and the Lady left alone in the Coach.---She lived in the Floor above *Garnier*, and ſeems to have been on no Terms of Intimacy with her. But what ſhews her negative Teſtimony of no Kind of Conſequence is, that ſhe can make no Manner of Gueſs at the Child's Age when he was brought, and does not know whether he was weaned or not when he was taken away :---Circumſtances which muſt have come to her Knowledge, had ſhe been in the Way to know any Thing.---She ſays the Lady paid *the Months* ; *Garnier* the Wife ſays that it was *La Marre* ; and *Garnier* the Huſband ſays it was ſometimes the one, and ſometimes the other: A Diſcrepancy, in ſuch a Circumſtance, is a Proof of their being in no Concert, but is none of the Falſhood either of the Huſband or Wife.

It was not neceſſary ſhe ſhould tell any Body the Child was a Twin, but it is very probable ſhe did no leſs ; ſo that ſhe has forgot. She has alſo forgot that *Boucault* ſaw *La Marre* at her Houſe, and knew that the Child was a Twin : But that only proves that there was no Concert between them. As to the reſt, ſhe tells her Story uniformly and conſiſtently. And though the Purſuers, not content with her firſt Account, thought fit to re-examine her a ſecond Time, and ſtrove for many Hours to entrap her with captious Queſtions, yet they have not been able to charge her with any Abſurdity. She ſometimes remembers a Converſation which the other Party in the Converſation has forgot, and ſometimes forgets what the other remembers. Thus, as in all Caſes, the poſitive Teſtimony of one Witneſs is oppoſed to the negative Teſtimony of the other: But this is ſo far from being an Objection to either, that it ſerves to confirm both.

Mrs. *Hewit*'s ſaying that they preſſed *Sholto*'s Nurſe to go along with them to *Rheims*, whereas *Garnier* ſays ſhe was not deſired to leave her own Houſe, has been clearly owing to this : The exceeding weak State of this Child was carefully concealed from Lady *Jane* ; ſhe would of Courſe be very deſirous to carry both Children along with her : *La Marre*, on the other Hand, knew that the Child could not ſupport the Fatigue of being tranſported to *Rheims* ; but not daring to tell Lady *Jane* ſo, and, probably, from the Hopes of future Reward, he was deſirous to have the Charge of the Child. Lady *Jane* knew the Child was weak, but not in the Degree he really was ; it was therefore neceſſary to give her ſome Reaſon why the Child could not be carried along ; and the obvious one was, that his Nurſe, though remarkably careful and good, and with whom he would be in abſolute Safety, under *La Marre*'s Eye, would not go along. Mrs. *Hewit* being preſent at ſuch Converſations, and not being able to converſe with the Nurſe herſelf, would naturally believe what was told Lady *Jane* : And it is not to be expected that Sir *John* would tell Mrs. *Hewit* every Pretence that Sir *John* and *La Marre* were obliged to uſe in order to keep Lady *Jane* eaſy. It is very probable they concealed their Apprehenſions about the Child from Mrs. *Hewit*, for Fear of her mentioning them to Lady *Jane*, and making her uneaſy. And this is confirmed by her Letter to the Maids, of the 12th of *Auguſt*, in which ſhe ſays, Sir *John* had given her ſuch good Accounts of *Sholto*, and of his Nurſe being ſo remarkably careful, that he was quite content to leave him with her. Serv. p. 36.

Had *Garnier* and her Huſband, and their Neighbour, been under undue Influence, or ſtudious to catch an Advantage by adopting a Story which did not belong to them, none of theſe little Variations would have been found in their Evidence. *Garnier* would have known the Name of the Child's Parents ; which at the Time of her Depoſition ſhe muſt have often heard : She and her Huſband would not have ſtuck ſo invariably to the eighteen Months that the Child remained with them. Theſe are Differences which confirm their Teſtimony ; and when explained, it remains eſtabliſhed, beyond the Poſſibility of a Doubt, that the Child ſo nurſed by *Garnier*, could be no other than *Sholto*, the Son of Lady *Jane Douglas*.

PART V. BOOK V.

Letters of the 10th of *July*, from which the Purſuers infer that no Delivery happened that Day.

THE Purſuers, in the laſt Place, inſiſt that Lady *Jane* could not be delivered on the 10th of *July*, becauſe ſome Letters appear to have been wrote by them on that Day which make no Mention of the Delivery.

Theſe Letters were ſix in Number; two to *Aix*, *viz.* that to Lord *Crawford* and that to *Florentine*, recommending the firſt to be delivered to him if at *Aix*, or forwarded; two to *Scotland*, *viz.* to his Son and Mr. *Macewen*; one to *Liege* to Mrs. *Hepburn*; one to *Rheims* to Mr. *Andrieux*; and along with the laſt was ſent a Letter from Mrs. *Hewit* to *Iſabel Walker*; ſuppoſed by her to be dated the 11th inſtead of the 10th; as all her Letters to *Iſabel Walker* from *Paris* were addreſſed to Mr. *Andrieux*, *pour faire tenir aux Demoiſelles de Mad.* Stewart.

Theſe Letters are all ſilent at leaſt of Lady *Jane*, or ſpeak of her as ſtill well, and looking for the happy Hour daily. Upon which, the Purſuers argue, and juſtly, that Lady *Jane* could not then have been brought-to-bed when they were written; and they go on to prove that they were written in the Afternoon, or poſterior to the whole Day of the 10th.

They take their Ground thus: As every Poſt ſets out from *Paris* by eight o'Clock in the Morning, it is improbable that Letters ſhould be written ſo early in the Day as that; and impoſſible, if they had been written, or even ſent away after ten or eleven o'Clock, that they ſhould not have mentioned ſuch a Circumſtance. But their own Dates, and the Entry in Lady *Jane*'s Pocket-Book, prove they were in Fact written on the 10th: Whereupon they conclude, that they muſt have been written ſubſequent to the Time now ſpecified for the Delivery.

As far as the Dates of the Letters go, there is nothing to infer againſt their being written on the 9th: For it is uſual to date Letters on the Day they are ſent away; and uſual with them too, as appears by the Letters of the 22d of *July*, which appear by the ſame Pocket-Book to have been written on the 21ſt; and ſo of the Letter of the 9th of *June* to Lord *Crawford*, which appears to have been written on the 8th; for it ſpeaks of Lady *Jane*'s Arrival at *Rheims* Yeſterday, and it is proved that ſhe arrived on the 7th.

As far as the Pocket-Book goes alſo, there is nothing to infer againſt their being written on the 9th; for the laſt-mentioned Letter to Lord *Crawford*, and one to Mr. *Florentine*, are there put down as writ on the 9th; that being the Day of ſending them away, though they were manifeſtly written on the 8th: And the other three Letters to *Aix-la-Chapelle*, entered at the ſame Time in the Pocket-Book upon the 9th of *June*, were probably wrote on the 8th, as well as thoſe to his Lordſhip and Mr. *Florentine*; as the Purpoſe of the Whole was only to inform their Friends of Lady *Jane*'s Arrival at *Rheims*. So that it is idle to argue, that, becauſe ſome Entries in the Pocket-Book ſpecify the Time of writing as well as that of ſending away, eſpecially where there is an Interval of ſome Days between, therefore ſuch Differences are always ſo ſpecified; when the Inſtances of Lord *Crawford* and Mr. *Florentine*'s Letters, and thoſe wrote to *Aix* at the ſame Time, prove the contrary, and many others may probably be of the ſame Sort. If this had been their Practice, they would have entered Lord *Crawford*'s, and the other Letters to *Aix*, as wrote the 8th; and again, that they were ſent off the 9th; and that the Letters in Queſtion were wrote the 9th, and ſent off the 10th: But it is impoſſible to find, or ſuppoſe, ſuch invariable Accuracy in keeping ſuch a Book.

The Purſuers ſay, Mrs. *Hepburn*'s Letter muſt have been written on the 10th, becauſe, in a Letter of the 6th of *Auguſt*, Sir *John* ſpeaks of it as written on that Day. This is alſo a ſtrained Comment; for he would naturally have ſpoken of it in the ſame Manner if it had been written on the 9th, but dated and ſent away on the 10th.

But why is all this Labour beſtowed on ſuch a Point, when it ſeems to be ſo perfectly indifferent whether they were written on the 9th or 10th? for how can it be called improbable that a Man ſhould write ſix ſuch Letters before eight o'Clock in the Morning of the 10th of *July*? The four which are preſerved, are not the Work of half an Hour: One Page to Lord *Crawford*, three Lines to *Florentine*, ſix to Mr. *Macewen*, and twelve to his Son. The Argument from Improbability is really none, and certainly inſufficient to build ſuch a Charge upon.

But if any Body can ſuppoſe it improbable that *ſix* ſuch Letters were written in a Morning before eight o'Clock, ſome of them at leaſt may have been written then, and the reſt over-Night; for it

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is not comprehended upon what Idea the Purſuers go in arguing, that becauſe they are all of the ſame Date, they muſt have been written the ſame Day, when the Day of their going off would certainly decide the Dates for them, whenever they were written. But ſuch Inferences, from ſuch Improbabilities, are not worth this Waſte of Paper.

The Purſuers ſeem to have thought this Argument wanted Countenance, for which Reaſon they have ſaid, in juſt ſo many Words, that it was ſo argued by the Defender; and, after ſtating it in that Manner, they agree to it with the Air of great Triumph. The Pleaſure of ſuch a Triumph ſeems to be dearly bought at the Expence of a Falſehood.

Suppoſing them to have been written on the 10th, they muſt, it is ſaid, have been written in the Afternoon, becauſe the Letter to Lord *Crawford* refers to Letters received that Day from *Scotland*. Now the Letters are delivered out of the Poſt-Office at twelve o'Clock at Noon; conſequently Sir *John* could not receive Letters on the 10th till the Afternoon, or Evening.

All the Letters they received, when at *Paris*, came to *Rheims*, to the Care of Mr. *Andrieux*, by whom they were directed to Sir *John* at *Godefroi*'s, at *Paris*: This appears by the Letter of the 18th of *July*, from Mr. *Andrieux*, ſo directed. The Letters, therefore, would lie there at *Godefroi*'s till they were either ſent or fetched, which might as eaſily happen to be the next Morning as the ſame Evening; and whichever it was, the alarming Contents of the *Scotch* Letters would find their Way into that ſent my Lord *Crawford* on the 10th.

There is a conſiderable Degree of Probability that the Letters to *Aix* and *Britain* were ſent off on the 10th, becauſe, otherwiſe, they would not have gone, the firſt till the 12th, the ſecond till the 13th: And it does not ſeem probable that ſuch ſhort Billets as they appear to be, would be writ on the 10th, in Contemplation of ſending them two or three Days afterwards. And though the Purſuers affect to ſuppoſe that the *Britiſh* Letters went by *Holland*, if they had ſtated the Courſe of that Poſt, the Obſervation would remain, the Poſt after the 10th to *Holland* was the 12th.

This Argument the Purſuers attempt to turn againſt the Defender thus:

1. The Courſe of the Poſt to all the Towns in *Germany*, except *Aix-la-Chapelle*, is on *Mondays* and *Fridays*. *Friday* was the 12th; therefore no Letter could be ſent to *Aix-la-Chapelle* on *Wedneſday* the 10th. But *Wedneſday* is the Poſt Day to *Aix-la-Chapelle*: That they admit; but they doubt whether Sir *John* knew it.

2. The *Britiſh* Letters muſt have been ſent by *Holland*, becauſe there was no direct Intercourſe of Poſt then between *France* and *England*: And Sir *John* knew this; for upon the 22d of the ſame Month he ſent a Letter to Lord *Crawford* in *England*, round by *Holland*, conſigned to the Care of *Robertſon*: And, ſo late as the 8th of *Auguſt*, even after the Poſt was opened, he ſent another the ſame Way. And yet in that very Letter to *Robertſon* of the 22d of *July*, he plainly ſhews that he had not ſent his Letter of the 10th the ſame Way; for he ſpeaks of that as the firſt Letter he had writ to him *after a long Reſpite of Intercourſe*: This the Purſuers think ſufficiently anſwered by *ſuppoſing*, that he might have ſent it to another Hand to be forwarded. Now if the *Britiſh* Letters were ſent by Way of *Holland*, they alſo muſt have been written on *Tueſday* the 9th, or *Wedneſday* the 10th, in Contemplation of being ſent on the *Friday*; and they conclude, in their uſual peremptory Stile, that there is certainly ſtronger Proof of their being ſent by *Holland*, than directly to *Britain*. P. P. 63. B.

Who that reads this Argument would think it poſſible that it was poſitively proved in the Cauſe, that the Letters in Queſtion went ſtraight to *Britain*?

The firſt *French* Mail which arrived after the Communication was opened, was on *July* the 27th, O. S. and ſo they ſtate it. The *London* Poſt-mark on one of the Letters in Queſtion, in which the other was incloſed, was the 27th. There were no *Dutch* Mails arrived at that Time; but one on the 25th, and another on the 30th. If it had come by the firſt, it would have been marked the 25th, and been ſent away the 26th: If it had come by the laſt, the Marks would have correſponded in the ſame Manner.

But as if this Way of arguing upon a total Suppreſſion of the Truth were not enough, they proceed ſo far as to colour their Argument by ſuggeſting a manifeſt Falſhood; which is, that the Defender's Counſel argued, that the Letters in Queſtion came by *Aix-la-Chapelle*, under Cover to *Florentine*, or to Mrs. *Hepburn*, at *Liege*, or to ſome Town in *Flanders*.

Now though they may think their Cauſe ſtands in need of ſuch Reſorts as theſe, it is not a fair Proceeding to impute Arguments to the Counſel which would have diſgraced their Underſtanding.

The

The next Topick to prove the Repugnance of theſe Letters to the Truth of the Delivery upon the 10th of *July*, is Sir *John* and Mrs. *Hewit*'s Anxiety to explain the Dates of the ſeveral Letters.

Sir *John* had writ five Letters, dated the 10th of *July*, of which he ſuffered three to take their Chance, without any Kind of Explanation; though two of thoſe three had been written to *Scotland*, where ſuch a Miſtake was moſt likely to prove moſt immediately material. The third was written to Mr. *Andrieux* at *Rheims*, where ſhe was to return with the Children ſuppoſed to be born the 10th. The only ones which he did condeſcend to explain, were thoſe to Mrs. *Hepburn* and Lord *Crawford*. The Explanation to Mrs. *Hepburn* conſiſts in informing her, upon the 6th of
Serv. p. 31. C. *Auguſt*, that Lady *Jane* was delivered on the 10th of *July*, *the Day on which I wrote you laſt*; leaving her to wonder why he had omitted to tell her of it, if in Truth there had been any Thing inconſiſtent in that, or if he had really imagined ſo. The Explanation to Lord *Crawford* conſiſts in referring to the Letter he wrote on the 10th, calling it one of the 6th; upon the Face of it a mere Blunder; leaving Lord *Crawford*, who knew the Letter was in Fact of the 10th, to entertain the ſame Wonder how Lady *Jane*'s Delivery, which was then ſaid to have happened on the 10th, came not to be mentioned in a Letter written on the very Day.

Mrs. *Hewit* had writ one Letter to the Maids, which was as uſual ſent to Mr. *Andrieux*; and as he was wrote to by Sir *John* on the 10th, it was highly probable that Mrs. *Hewit*'s to the Maids was ſent at the ſame Time: But Mrs. *Hewit* in her next Letter ſays, ſhe believes it was dated the 11th inſtead of the 10th.

Serv. p. 35. There are no Traces of Mrs. *Hewit*'s Letter ſuppoſed to have been dated the 11th, but in her own Letter of the 22d, where ſhe mentions Lady *Jane*'s Labour-Pains to have ſeized her about twelve on the 10th, "*four Hours after your Letter went off*;" and in the End adds, that ſhe wrote them a Letter on the 10th, which in the Hurry ſhe was in at laſt Writing, *ſhe believes* was dated the 11th. It is therefore by no means a Thing proved, that her Letter was dated the 11th: From the uncertain Manner in which ſhe writes of it, there is full as much Reaſon to ſuppoſe her miſtaken in her Memory of the Letter, as in the dating it at firſt.

The Purſuers, however, taking that for clear which the Evidence leaves uncertain, think this Correction betrays itſelf to be fraudulent, becauſe it is improbable ſhe ſhould remember on the 22d, an Error which *quite* eſcaped her Attention on the 10th. How does it appear for how long it eſcaped her? In writing ſhe miſtook the Day of the Month; the Moment the Letter was gone off, if Sir *John* talked of the Date of his Letters, or any other accidental Converſation turned on the Day of the Month, her Miſtake would immediately ſtrike her, and then there is an End to the Argument, from the Error quite eſcaping her at the Time: Nay, *Iſabel* herſelf may have taken Notice of that Miſtake in her Anſwer; and the Letter of the 22d may be no more than acceding to *Iſabel*'s Correction.

They comment alſo upon the Word *Hurry*, as if Mrs. *Hewit*, cunning Creature! while ſhe was altering the Date to make *Iſabel* believe it was writ before the Birth, ſhould take Care at the ſame Time to convey that in Truth it was written after. Nay, this Piece of Cunning belongs to them all; for the Alteration of Dates it ſeems was a concerted Thing.

Upon this Occaſion *Iſabel* ſeems to be no Accomplice; here is a concerted Plan to deceive her.

The firſt Obſervation which occurs, on the other Hand, is that, when they are ſuppoſed to be concerting the Alteration of the Date, they look upon it as quite enough to put it back to the 10th; though in the ſame Inſtant, they mention the Labour as happening in the Middle of that Day. This, upon their own Idea, is an Anſwer to all the Argument of the Purſuers, that the Date of the 10th proves the Letter to have been ſent away on the 11th.

The ſecond Obſervation which occurs is, the ſimple Honeſty of the Correction. If the Correction were juſt it would appear ſo at once, by the Receit of the Letter upon the 11th. But if it had been writ in Fact upon the 11th, and ſent to the Poſt-Office at Eight o' Clock, as Mrs. *Hewit* ſays it was, it could not have been received before the 12th; and then Mrs. *Hewit*, Sir *John* and Lady *Jane*, who are all concerned in this pretended Concert, ought to have explained not only how it came to be miſdated, but miſ-ſent.

Thirdly, if their Idea be juſt, that their Letters were written over-Night to be ſent the next Morning, this would not have been received till the 13th; and then the Miſdate would have been more inconceivable ſtill, without a further Explanation.

But this concerted Explanation will appear more remarkably abſurd, if it is reflected upon what Situation they are ſuppoſed to be in on the 21ſt, when it is imputed to them. They are ſuppoſed to be conſcious of the Concluſions manifeſt on their Letters, and to be contriving the Means to cure it; and yet it did not occur to them while they were correcting the Dates of Letters, to put them back to the 9th: And though they were conſcious of having dated ſix Letters at the ſame Time,

Time, they content themſelves with an aukward Attempt to correct the Dates of two, and leave the other four, though equally inconſiſtent, to the Account of the Time of the Delivery with thoſe which they are ſaid to have attempted to correct; nor while they were ſettling the Epoch of a fictitious Birth, to bring that forward to the 11th, ſo as to keep free of the Dates of the Letters they remembered to have wrote.

Again: The Evidence of theſe Dates is taken from their Pocket-Book, where they are repeated; in which one certainly, if not both, are written ſoon after the ſuppoſed Theft of the Child. They would doubtleſs have made their Entries there conformable to the Idea they meant to give out, or at leaſt not have kept the Proof of their Fraud ſtaring them continually in the Face, or not have left it in Trunks at their Lodgings, for every Body to look at who pleaſed; for this is ſaid to be an Article of Fraud anxiouſly meditated.

In fine, they are ſuppoſed to be writing in this Faſhion to *Rheims*, where the Delivery is to become the immediate Subject of Tea-Tables; at the very Time when it appears, by Mr. *Maillefer*'s Letter to *Godefroi* of the 12th, he was enquiring after them very particularly. This Letter of the 12th to *Godefroi*, was anſwered on the 14th, as appears from the Buſineſs tranſacted thereby. The Town of *Rheims* determining to put an End to a Law-Suit, by paying the Money in Diſpute, *Maillefer*, the Syndic, wrote *Godefroi*, their Agent, Orders to pay it; he did ſo on the 13th, as appears by the Acquittance tranſmitted, it muſt be preſumed the 14th. The Purſuers ſay they were at *Godefroi*'s on this Day; and yet their Letters to *Rheims* relate a Tranſaction which *Godefroi*'s Letters muſt contradict: Not to mention how highly improbable it is, that *Godefroi* ſhould take no Notice to this Part of the Compliment made through him by the Syndic.

PART VI.

CHAP. I.

Of the Letters dated from Rheims.

THE Purſuers, in the next Place, inſiſt upon a few Objections to the Conduct of Sir *John* and Lady *Jane*, after the Birth upon the 10th of *July*, which, they ſay, is more conſiſtent with a fictitious than a real Birth.

Although it were impoſſible for the Defender to account for every Part of the Conduct of his Parents, at the Diſtance of twenty Years; and after the whole Parties, who knew the different Motives and Reaſons upon which they acted, are dead; it certainly would be no extraordinary Caſe, as it is believed very few Perſons, at any Diſtance of Time, can give a ſatisfactory Reaſon for their Actions. Yet, in this Caſe, the Defender is confident he can defend the Conduct of his Parents in every Particular: At leaſt, he will certainly ſhew, that it was totally inconſiſtent with every Idea of Fraud.

The firſt which falls to be mentioned is, that Sir *John*, Lady *Jane*, and Mrs. *Hewit*, carefully concealed from all their Acquaintances, that *Paris* was the Place of Lady *Jane*'s Delivery; and that, in Purſuance of their fraudulent Plan, they wrote many Letters to different Perſons while at *Paris*, which were falſely dated as from *Rheims*; and, of Conſequence, implied that the Delivery had happened there, and not at *Paris*.

In order to ſettle the Ground upon which this Objection ſtands, there is ſubjoined * a Liſt of the whole Letters, Bills, and others, wrote by Sir *John*, Lady *Jane*, and Mrs. *Hewit*, from their Departure for *Paris* the 2d of *July*, to their Return to *Rheims* the 16th of *Auguſt* 1748, as far as has been diſcovered: From which it will appear, that theſe Writings, ſo far from proving a fraudulent Intention of Concealment, do, on the contrary, demonſtrate an artleſs Simplicity and unſuſpecting Innocence, from whence it is impoſſible to infer any Guilt.

The firſt Obſervation which occurs is, that if the Concealment of the Journey to *Paris* had been their Reaſon for dating ſome Letters from *Rheims*, the ſame bad Purpoſe would have induced them to date their whole Letters from this Place: For it is inconceivable that Sir *John Stewart* (carrying on a fraudulent Concealment, as ſuppoſed) ſhould have informed Baron *Macelligot* and Lady
P. P. 1034. L. *Wigton* at *Aix*, of his Journey to *Paris*; and ſhould have allowed his Receit to Meſſrs. *Taſſin*'s to be ſent to Meſſrs. *Khar* at *Aix*; and at the ſame Time, ſhould ſend a Letter dated at *Rheims* to Lord *Crawford* at *Aix*, who would immediately diſcover his being at *Paris*, from his intimate Connection both with the Baron and Mr. *Khar*; who could not fail to inform him of every Thing they had learned with Regard to Lady *Jane*.

P. P. 422. B. — * 1. Letter by Sir *John Stewart* to Baron *Macelligot*, who was then at *Aix*, dated 5 *July*, *Paris*.
—— 1034. H. 2. Receit by Sir *John* to Meſſ. *Taſſin*, dated 6 *July*, - - - - *Paris*.
—— 1069. C. 3. Letter, Sir *John* to Mr. *Florentine* at *Aix*, 10 *July*, - - - Without Place.
—— 61. G. 4. Letter, Sir *John* to Lord *Crawford*, dated 10 *July*, - - - - *Rheims*.
N. B. This was incloſed in the above Letter to Mr. *Florentine*, who was deſired to deliver it to his Lordſhip if at *Aix*, and if not, to ſend it to him.
Serv. 31. C. 5. Letter, Sir *John* to Mrs. *Hepburn* of *Keith*, 10 *July*, - - - *Paris*.
P. P. 1064. K. 6. Letter, Sir *John* to Mr. *Macenven* at *Edinburgh*, 10 *July*, - - - *Rheims*.
—— 1064. A. 7. Letter, Sir *John* to his Son, now Sir *John Stewart*, 10 *July*, - - *Rheims*.
Serv. 7. A. 8. Letter, Mrs. *Hewit* to Mr. *Colville*, Date unknown, but as Mr. *Colville* ſwears, dated at *Paris*.
P. P. 298. D. 9. Letter, Mrs. *Hewit* to Mr. *Douglas* of *Edrington*, Date unknown, but proved at - *Paris*.
—372—Ser. 2. B.
P. P. 62. C. 10. Sir *John* to Lord *Crawford*, 22 *July*, - - - - - *Rheims*.
—— 63. F. 11. Sir *John* to Mr. *Robertſon* at *Rotterdam*, 22 *July*, - - - - *Rheims*.
—350B—353. A. 12. Sir *John* to Baron *Macelligot*, 21 *July*, - - - - *Paris*.
—— 527. H. 13. Letter, Sir *John* to Lady *Wigton*, Date unknown, - - - *Paris*.
Serv. 31. G. 14. Letter, Sir *John* to Mrs. *Hepburn*, dated 6 *Auguſt*, without Place, Poſt Mark *Damartine*.
P. P. 63. 15. Letter, Lady *Jane* to the Duke of *Douglas*, 7 *Auguſt*, - - - *Rheims*.
D. P. 997. D. 16. Bill of Exchange upon Meſſ. *Coutts*, ſigned by Lady *Jane*, dated 8 *Auguſt*, - - *Paris*.
—— 557. B. 17. Letter, Sir *John* to Mr. *Robertſon* at *Rotterdam*, 8 *Auguſt*, - - - *Paris*.
—— 557. F. 18. Letter, Sir *John* to ditto, 8 *Auguſt*, - - - - - *Paris*.

From this Liſt it appears, that during their Stay at *Paris* and at *Damartine*, they wrote eighteen Letters, *&c.* in all, ten of which are dated from *Paris*, ſix from *Rheims*, and two from no Place. And beſides theſe dated from *Paris*, which have been diſcovered, it appears, that after Sir *John*'s Return to *Rheims*, there came Letters addreſſed to him at *Pelletier*'s Coffee-houſe in *Paris*, which were afterwards ſent to him at *Rheims*; ſo that Sir *John* muſt have wrote other Letters dated at *Paris*, which do not now appear.

Again,

Again, it is incredible that Lady *Jane* would have drawn a Bill on the Duke's Banker, dated at *Paris*, within twenty-eight Days of her Delivery, which was immediately to paſs into the Hands of the Perſons employed in his Grace's Buſineſs in *Scotland*, if ſhe had meant to conceal that ſhe had gone to *Paris*.

It is impoſſible, that, if a Fraud was carrying on, ſhe would date her Letter informing him of the Birth, as if happening at *Rheims*, and date the Bill, drawn on his Caſhiers, *from Paris*, the very next Day. The Reaſon, therefore, of her Letter being dated from *Rheims*, plainly aroſe from her being then at *Dammartin*, a ſmall, unknown Village on the Road to *Rheims*, which was her ordinary Place of Reſidence, and where ſhe meant the Anſwer ſhe expected ſhould be directed.

In the third Place, it is impoſſible that Sir *John* meant to conceal Lady *Jane*'s being delivered at *Paris* from his Son, when he invited him ſo preſſingly in that very Letter to go over and live with them at *Rheims*, where he muſt immediately know the Delivery was at *Paris*.

And laſtly, if Concealment of the Place of Delivery had been the Reaſon of Sir *John*'s dating ſome Letters from *Rheims*, when they were actually at *Paris*, it is certain there muſt have been a concerted Scheme, in which Mrs. *Hewit* was a Party: Conſequently, ſhe would not have dated any of her Letters contrary to the concerted Plan; yet, in Fact, they are all dated from *Paris*.

This being the Caſe, it is impoſſible to infer the ſmalleſt Suſpicion of Fraud from the erroneous Date of ſome of theſe Letters: Indeed, if a Fraud had been carrying on, or if they had ever ſuſpected the Imputation of Fraud, they would not have dated any Letter from *Rheims*.---Their acting in a different Manner is a Proof of their Innocence, and can never, without a malevolent Conſtruction, afford the ſlighteſt Suſpicion of Guilt.

The Purſuers, are, indeed, ſenſible of the Force of theſe Obſervations, and do not deny the Concluſion.---But their Objections to this Part of their Conduct, are,

1. They ſay, that as Sir *John* and Lady *Jane* had invited Lady *Wigton* and Baron *Macelligot* to come to *Rheims*, to be Godfather and Godmother to the Child, they would immediately, upon their Arrival there, learn, that the Delivery had happened at *Paris*; and that therefore, they could not date their Letters to them from *Rheims*, for Fear of their ſuſpecting a Fraud.

By the ſame Rule, the Defender may with Juſtice inſiſt, that it is impoſſible that Sir *John* could have any fraudulent Purpoſe in dating the Letter to his Son from *Rheims*; becauſe he anxiouſly requeſts him to come over, and live with him at *Rheims*, where he would have immediately heard that the Delivery happened at *Paris*.

2. The Purſuers ſay, that as Sir *John* dated his Letters from *Rheims*, and as Mrs. *Hewit* certainly was an Accomplice with him in the Fraud, if any was committed; it is highly improbable ſhe ſhould date her Letters from *Paris*: That therefore Mr. *Douglas* of *Edrington*, and Mr. *Colvil*, muſt be groſly miſtaken, or wilfully perjured, in ſaying, that they received Letters from her, dated *Paris*; more eſpecially, as in Mrs. *Hewit*'s Letter of the 12th of *Auguſt*, ſhe, for the firſt Time, allowed the Maids to publiſh the Birth at *Rheims*, as Lady *Jane* had then wrote an Account of it to her Brother, which was the ſooneſt ſhe was able.

It is anſwered, That Mrs. *Hewit* did write to Mr. *Colvil*, and to Mr. *Douglas* of *Edrington*, from *Paris*, informing them of the Birth, is inconteſtibly proved by the Teſtimony of theſe Gentlemen, who are of unimpeached Character.---The natural and juſt Concluſion to be drawn from the Evidence in this Caſe, is the Reverſe of what the Purſuers ſuppoſe. As Sir *John* dated ſome of his Letters from *Rheims*, while Mrs. *Hewit* dated all her Letters from *Paris*, this ſhews they were Accomplices in Nothing; and that Sir *John* dating ſome of his Letters from *Rheims* is perfectly innocent, and diſconnected with the ſuppoſed Fraud.

Mr. *Colvil* has diſtinctly and repeatedly ſworn that the Letter from Mrs. *Hewit* (which was loſt only a few Years before the Commencenent of this Action) was dated from *Paris*, and that he immediately ſhewed it to Mr. *Archibald Stuart*, who took a Copy or Note from it, which he promiſed to ſend to the Duke of *Douglas*; and Mr. *Colvil* is confirmed in this Account by a Letter from *Archibald Stuart* to Sir *John*, in which he ſays he *very early* heard of Lady *Jane*'s Delivery of Twins, and wiſhes him Joy upon that Event. Mr. *Stuart* could not have ſaid he was *very early* informed of the Delivery, if he had not heard of it before their Return to *Rheims*, five Weeks after it happened; and in Fact he has ſworn that it was Mr. *Colvil* who gave him the firſt Accounts of Lady *Jane*'s Delivery, and that he took an Excerpt from the Letter which mentioned the Delivery, tho' he is pleaſed not to know from what Place the Letter was dated, nor where the Excerpt now is. Serv. 7. A. D. P. 298. D. P. P. 335. D.

Mr. *Douglas* of *Edrington* has alſo loſt his Letter; but he has on two different Occaſions ſworn that it was dated *from Paris*; and he remembers that it was recently after Lady *Jane*'s Delivery, as ſhe was not then in a Condition to write herſelf. Serv. 23. D. P. P. 372. F.

Mrs. *Hewit*'s Letter of the 12th of *Auguſt*, allowing the Maids to tell Mr. *Mackenzie* or any Perſon elſe, of Lady *Jane*'s Delivery, as ſhe had then ſent Notice of it to her Brother, moſt certainly does
P. P. 62. L. not prove that the Birth was till then kept a Secret---for Sir *John* had notified it to Lord *Crawford* on the 21ſt of *July*, and deſired him to inform Lord *Mark Kerr*, her Uncle, of it, and his Lordſhip was not deſired to keep it a Secret from any Mortal.---Beſides, it had been from the firſt publickly ſpoke of at *Rheims*, from thence communicated to Lady *Wigton* at *Spa*, and was never induſtriouſly concealed at any Time or Place.

3. The Purſuers further ſay, that Lady *Jane*'s dating her Letter to her Brother from *Rheims* when ſhe was at *Dammartin*, was fraudulent; and that her dating the Bill on the Duke's Banker, from *Paris*, was a Caſe of Neceſſity, otherwiſe the *Paris* Bankers would not have given the Money for it.

This Objection ſuppoſes that Lady *Jane* was attempting a Concealment of the Place of her Delivery; but if this had been then in her View, ſhe would not have been ſo extremely inattentive as to ſend a Letter to her Brother dated at one Place, and a Bill to be immediately conveyed to a Banker at *Edinburgh*, which was to be ſhewn to his Doers, dated at a different Place, as this muſt have immediately detected the Impoſition.---The only probable Reaſon, therefore, for her dating her Letter at *Rheims* was (as has been already mentioned), that ſhe was then at a ſmall unknown Village, on her Road to *Rheims*, where ſhe propoſed within a few Days to fix her Reſidence, and would there of Courſe receive the Anſwer, if any was made to her Letter.

It is in vain to pretend that her dating the Bill from *Paris* was a Caſe of Neceſſity, to ſuit the *Paris* Banker, who would not otherwiſe have given them Money for it.---The *Paris* Banker was directed by his Correſpondent at *Rheims*, to give Sir *John* Money for his Draughts on *England* or *Scotland*; in Conſequence of which Sir *John* gave him a Bill on Meſſ. *Coutts*, Bankers at *Edinburgh*, and received the Value; and it was perfectly indifferent to the *Paris* Banker from what Place this Bill was drawn.---If the Bill had indeed been drawn, and preſented by Sir *John* himſelf, he muſt have dated it at *Paris*; but as he was only the Bearer of a Bill drawn by Lady *Jane*, there was not the ſmalleſt Neceſſity for its being dated at *Paris*.- -And what further ſhows Lady *Jane*'s perfect Indifference at this Time, with Reſpect to the Place and Date of her Bills and Letters is, That this Bill, which ſhe dated from *Paris* the 8th of *Auguſt*, on being preſented to the Banker at *Rotterdam*, was refuſed on Account of its being made payable Three Months too early; and Lady *Jane*, of whoſe Reſidence at *Rheims Pannier* the Banker was informed, replaced it with another Bill dated *Paris* the 8th of *Auguſt* 1748, which was ſent from *Rheims* by Sir *John* on the 20th of *Auguſt*; ſo that *Pannier* accepted of a Bill without Scruple, dated the 8th of *Auguſt at Paris*, which he knew was wrote the 20th of *Auguſt at Rheims*.

P. P. 379. C. It is in Proof, that Mr. *Hepburn* of *Keith* was perfectly acquainted with their whole Motions.---She knew their firſt Intention of ſtaying at *Rheims* till Lady *Jane*'s Delivery; ſhe was afterwards informed that ſhe had been adviſed to go to *Paris*.---Sir *John* wrote her from *Paris* on the 10th of
Serv. 32. D. *July*, and Lady *Jane* told her in *October*, that Sir *John* was gone to *Paris* to ſee *Sholto*; ſo that it is impoſſible to ſuppoſe fraudulent Concealment on the Part of Sir *John* and Lady *Jane* in any one Step, unleſs Mrs. *Hepburn* be an Accomplice.

It is ſaid, That by dating the Letters from *Rheims*, it was implied that Lady *Jane* was delivered there.---No Doubt this might be inferred, (though the Letters do not ſay ſo) if in Fact theſe Letters were the only Proof of the Place of Delivery. But it is certain, that Sir *John* and Lady *Jane* at no Time pretended or ſaid, that the Delivery had been at *Rheims*; and indeed it would have been impoſſible for them to have ſaid ſo, becauſe their being at *Paris* was not only known at *Rheims*, but likewiſe at *Liege*, *Aix*, and *Spa*, where there were many *Britiſh* who correſponded with their Friends in *Britain*.---It appears too, that the Duke of *Douglas* was ſoon informed that it happened in *Paris*.

The Defender might add, that it is not uncommon for People to date their Letters, not from the Place where they write (if their Stay is for a few Days only), but from their uſual Place of Reſidence, where they propoſe to be when the Anſwers arrive.

The Letters in Queſtion were only produced in the laſt Stage of this Cauſe, long after Sir *John*'s Death; and it is now impoſſible to ſay, with Certainty, what might have prompted Sir *John*, at the Time, to date ſome of the Letters as they appear: It muſt be ſufficient for the Defender to ſhew, that no fraudulent Purpoſe can be inferred.

CHAP. II.

Of Sir John's *avoiding the Company of the* Britiſh *People at* Paris, *in* July 1748.

THE next ſuſpicious Circumſtance charged to the Conduct of Sir *John* and Lady *Jane* is, that he carefully avoided the Company of many *Britiſh* People then at *Paris*, which he certainly would not have done on ſo remarkable an Occaſion as that of Lady *Jane*'s Delivery of Twins, if ſome Fraud had not been intended; more eſpecially that, if he was then in Straits (as he pretends), he might have had a Supply of Money from theſe his Countrymen and Friends.——That particularly Sir *William Stewart*, and his Lady, with whom Sir *John* and Lady *Jane* were intimate at *Aix* the Year before, were then at *Paris*.——That one *Johnſton*, a Couſin of Mrs. *Hewit*'s, who went from *England* with them; who lived with them at the *Hague* for ſome Time; and with whom Mrs. *Hewit* correſponded afterwards, was alſo at *Paris*; and under whoſe Care it was natural for them to have left their youngeſt Child, if he had really exiſted.—And that he was not even ſeen by Mr. *Gordon* or Mr. *Ruddoch* of the *Scotch* College, where moſt of the Gentlemen from *Scotland* are well known, nor by Mr. *Patullo*, with whom Sir *John* was probably acquainted.

That Sir *John* did not conceal himſelf at *Paris*, is apparent from every Part of his Conduct. —Before he left *Rheims* he told publicly, and to every Perſon of his Acquaintance, that he was going to *Paris*, and the Purpoſe of his Journey:—He wrote to *Liege* and *Spa* to the ſame Purpoſe; he carried a Letter with him from the Chief Magiſtrate of *Rheims* to *Godefroi*, and lodged at that public Inn for ſome Days:—During his Stay there, he went every Day abroad to the public Coffee-houſes, and became acquainted there with ſeveral People, particularly with one *Conn*, a *Scotchman*.——After he left *Godefroi*'s his Letters ſtill came to that Inn, and were ſent to Sir *John* from thence:—On his going to *Michel*'s he told them he had lived four Days in *Godefroi*'s; and both here and at *Godefroi*'s, he gave his true Names and Addition, to be inſerted in the Records of Police; and during his Stay at *Michel*'s Houſe, he went every Day abroad, and frequented the Coffee-houſe in the ſame Manner he had done at *Godefroi*'s.——Theſe Circumſtances ought to remove every Imputation of Diſguiſe or Concealment.

With reſpect to the Imputation of his avoiding the *Britiſh* People then at *Paris*, and not applying to them for Relief, rather than borrow Money from *Andrieux* at *Rheims*,——the Anſwer is extremely obvious:—The *Britiſh* People who appeared from the Record of Police to have been then at *Paris*, were Tradeſmen, *Marchandes des Mode*, young Students, and ſuch-like, who were abſolute Strangers to Sir *John* and Lady *Jane*; and of ſuch a Rank in Life, as it is impoſſible to imagine Sir *John* would keep Company with any of them, if he had accidentally ſeen them; much leſs that he would, at ſuch a Time, go about in Queſt of them. D.P. 10--36. B. —— 161. C. —— 162. E. —— 161. F.

There were indeed ſome few of thoſe *Scotchmen* in *Paris* who had been driven out of the Country on Account of their Acceſſion to the late Rebellion, and were then ſo needy, as to be unable to ſupport themſelves, much leſs to ſupply the Wants of others.——Sir *John* was not ignorant of this, and very probably avoided them for no other Reaſon, but becauſe he was utterly unable to relieve them; and there certainly was not a ſingle *Scotchman* then at *Paris* to whom Sir *John* could have applied for the leaſt Supply of Money, though Mr. *Andrieux* had refuſed him.

Though Sir *William Stewart* was then at *Paris*, it was utterly unknown to Sir *John Stewart*; for Sir *William* told him, when he left *Spa*, that he was to return directly to *Italy*, from whence he had come the Year before: He indeed changed his Mind, and went to *Paris*; but this Sir *John* knew nothing of.—Beſides, Sir *William* was not the Perſon Sir *John* could have deſired to ſee in Expectation of a Supply of Money, as it appears he had formerly refuſed Sir *John* this Favour upon a preſſing Occaſion.

Chevalier *Johnſton*, who was Mrs. *Hewit*'s diſtant Relation, did not then live in *Paris*, but at the Diſtance of ſix Miles from it; conſequently, unleſs he ſent to the Country for him, he had no Opportunity of ſeeing him. And that they did not put themſelves to this Trouble, or leave the Charge of their Child to him, will not appear extraordinary, when his Circumſtances and Situation are attended to. He was indeed a diſtant Relation of Mrs. *Hewit*'s, and on Account of that Connection was carried by Lady *Jane* to *Holland*. He was diſguiſed as her Servant, becauſe of his Acceſſion to the Rebellion; and they maintained him out of Charity ſome Time at the *Hague*. He, however, was never told of Lady *Jane* and Sir *John*'s being married, and was in no Degree of Intimacy with either; and his Circumſtances of being an exiled Rebel certainly made him the moſt improper Perſon in the World to have the Care of the Child committed to him. It was a moſt natural Part for the Duke of *Douglas*, on being informed of the Delivery, and that one of the Children was tender and left at *Paris*, to have enquired how, and in what Manner, he was P. P. 805. E.

taken Care of: And if he had done this, and had learnt that he was under the Care of an exiled Rebel and Mrs. *Hewit*'s Relation, it certainly would not have facilitated a Reconciliation betwixt the Duke and Lady *Jane*, or removed the Suſpicions of the Truth of the Delivery, if he had entertained any: So that thoſe who blame Sir *John* for not truſting his Child to the Care of *Johnſton*, certainly blame him for one of the moſt prudent Actions in his Life.

P. P. 57. H. It is not obvious upon what Footing he ſhould have gone about in Queſt of Principal *Gordon*, Mr. *Ruddoch*, or Mr. *Patillo*, of whom he had not the moſt diſtant Acquaintance. At the ſame Time, it appears, he did call on Mr. *Innes*, who was then Principal of the *Scotch* College. There is not, therefore, a Colour of Reaſon to preſume a fraudulent Concealment on Account of Sir *John* or Lady *Jane*'s not ſeeing ſeveral *Britiſh* Perſons who now appear to have been at *Paris* in *July* 1748, eſpecially as his Behaviour in *October* 1748, and in Summer 1749, when no Fraud is alledged, was preciſely the ſame. In *October* 1748, the only *Scotch* Perſon he is known to have ſeen is *Johnſton*; who being then in Town, went to ſee him: And in Summer 1749, there is not a ſingle Perſon who is known to have ſeen him. This the Purſuers allow to have been perfectly innocent, only becauſe there is no Fraud or Concealment to charge him with at that Time. In Fact, there is not one Reaſon to object Concealment in *July* 1748, but becauſe the Purſuers conſtantly take the Crime imputed to him as proved, and then argue that Concealment (as they call it) muſt have been intended to cover it.

D. P. 91. F. At the ſame Time, it is not true that Sir *John* ſaw none of his Countrymen at *Paris*: It is proved that Mr. *Stewart* of *Ardſhiel* viſited Lady *Jane* at *Paris* at this Time; and *Conn*, the *Scotchman*, whom he frequently ſaw, would, moſt probably, acquaint ſuch *Scotchmen* he knew, of Sir *John*'s being in *Paris*.

The Purſuers have examined ſome Witneſſes who ſay, that *Ardſhiel* never told them that he had ſeen Lady *Jane* at *Paris*, or that he knew ſhe had been delivered there. But ſurely, his not mentioning this Circumſtance to them, does not prove that he did not inform his Wife of it. It ſhews no more, than that the little Incidents of Lady *Jane*'s Family were not ſo much attended to, and ſo univerſally ſpoke of, in 1748 as in 1763. Mr. *Hay*, a *Scotchman*, who came to *Paris* in *October* 1748 with Sir *John*, knew that Lady *Jane* was delivered at *Paris*, and that one of her Children was left in the Neighbourhood of *Paris*; yet he never mentioned theſe Circumſtances to the Principal of the *Scotch* College, or the other Witneſſes examined to prove that *Ardſhiel* did not mention it to them.

CHAP. III.

Of Letters wrote on the twenty-firſt of July.

THE only other Imputation which the Purſuers have offered to the Conduct of Sir *John*, Lady *Jane*, and Mrs. *Hewit*, when at *Paris*, is, That though the Delivery is ſaid to have happened the 10th of *July*, yet no Letters were written to any Perſon, giving Accounts of this important Event, till the 21ſt of *July*; which they ſuppoſe to have been owing to this, That they could not mention the Birth till they were poſſeſt of the Child; and that as ſoon as *Mignon*'s Child was carried off by Sir *John* on the 18th of *July*, there was no Delay after this in announcing the Birth to the Maids and others.

In this, as in many other Articles, the Purſuers argue, in direct Oppoſition to another Part of their Caſe.—If they could not announce the Delivery before they were poſſeſſed of a Child, it follows, that they could as little announce the Delivery of Twins before they were poſſeſſed of two; and yet the Purſuers in another Place inſiſt, That after they had got one Child, and found it impoſſible to procure a ſecond, yet they gave out, that Lady *Jane* was delivered of Twins.

2d. It has been ſhewn, that there is no Evidence that *Mignon*'s Child was carried off the 18th of *July*:—It is moſt probable it was not carried off till long after Sir *John* and his Family were at *Rheims*; and all the Purſuers Witneſſes who ſpeak to the Date, implicitly follow the *Monitoire*, and fix the *Enlevement* to the 11th of *July*

3d. It has been diſtinctly ſhewn, that at whatever Time the Child of *Mignon* was carried off, Sir *John* and Lady *Jane* had nothing to do with it; and that the Defender is totally different in every Particular from that Child: So that this *Enlevement* could have no Influence upon their Conduct.

4th. It appears that Sir *John* and Mrs. *Hewit* did not expect that Lady *Jane* would have been brought to-bed ſo early as in Fact ſhe was.---This, together with the Birth of Twins, (another unexpected Event) the remarkable Weakneſs of one of them, and the Attention to both, occaſioned much Confuſion and Anxiety for ſome Time, and renders it a Matter of no Surprize, that no Letters were written

written for a few Days after, until Lady *Jane* was out of Danger, and the Children were ſettled with their different Nurſes.

5th. Though no Letters appear in Proceſs of an earlier Date than the 21ſt of *July*; and though the Letters of that Date were no Doubt the firſt which were written after the Delivery to Lord *Crawford* and the Maids, it does not from thence follow, that they wrote to no other Perſon of an earlier Date.---It appears, as has been already ſtated, that Mrs. *Hewit* informed Mr. *Douglas* of *Edrington* of the Birth ſoon after it happened; and that this was before Lady *Jane*'s Recovery.---It appears alſo, that ſhe wrote the ſame Account to Mr. *Colvil*, and that he received the Letter at *Edinburgh*, about a Fortnight after the 10th of *July*;---which is confirmed by *Archibald Stuart*'s Letter before mentioned to Sir *John*, ſaying, he *very early* heard of Lady *Jane*'s Delivery.

One great Objection to Sir *John* and Lady *Jane*'s Conduct at the Beginning of this Cauſe was, that in the Extract of the Defender's Baptiſm, they had fraudulently concealed the Date and Place of the Birth, contrary "aux Ordonnances du Royaume."---This was at firſt much inſiſted on; but it is now proved, that the Extract of his Baptiſm was preciſely in the ſame Terms with all the other *Extraits baptiſaire* in *Rheims*; ſince which Time this "fraudulent Precaution," as it was called, has not been heard of.

CHAP. IV.

Of the firſt Accounts from Scotland, *and their Conduct in Conſequence thereof.*

1ſt. THAT as ſoon as the News of the Birth of Lady *Jane*'s Children reached *Scotland*, a Report aroſe, that her Delivery of Twins was impoſſible at her Time of Life: That this Report ſoon reached the Ears of Mr. *Colvil*, who informed Mrs. *Hewit* thereof; who in Anſwer told him, the Birth was too well known or vouched to be diſbelieved:---That after this Report, if Lady *Jane* had really been delivered of Twins, they certainly would have applied to, and got proper Certificates from the *Accoucheur*, with whom they were then in conſtant Correſpondence, and from the Perſons in whoſe Houſe the Delivery is ſaid to have happened; and their not following this obvious Method ſhews there was no *Accoucheur* with whom they were in Correſpondence.

This Objection rather ſeems to afford a preſumptive Argument in Favour of the Truth of the Delivery. Mr. *Colvil* having heard the Reports of the Incredibility of Lady *Jane*'s Delivery on Account of her Age, (which have now been happily traced to its Source) conſidered it (as he ſays himſelf) as *a meer Farce*, and paid no Regard to it: But as he was in Correſpondence with Mrs. *Hewit* he mentioned it to her as ſuch, without either enquiring into the Truth or Falſhood of it, or aſking her a ſingle Queſtion about the Time, Place, or any other Circumſtances of the Birth. She gave herſelf no Manner of Trouble on this Subject, and only told him the Birth was too well known or vouched to be diſbelieved.---Mrs. *Hewit* herſelf knew that the Report was falſe; and it certainly would have been an extraordinary Piece of Conduct in her to have mentioned to Sir *John* and Lady *Jane* ſo idle, and at the ſame Time ſo injurious, a Report. But this Rumour, contemptible as it was, muſt have given them the utmoſt Uneaſineſs, if they had been guilty of any Crime.---The Circumſtances in which they are ſuppoſed by the Purſuers to have been at this Time are, that they had given out univerſally that Lady *Jane* was delivered of Twins: That one *La Marre*, an *Accoucheur* in *Paris*, had brought her to-bed; and that ſhe had left one of her Children at *Paris* under his Care, on Account of his weakly State. It is pretended, that though a *La Marre* did then practiſe Midwifery at *Paris*, yet that they had no Connection whatever with him; and that they had no ſecond Child in their Poſſeſſion at *Paris*, or elſewhere. If this had been ſo, on hearing that Lady *Jane*'s Delivery was throught incredible, and was ſuſpected, they muſt have believed that their Fraud had ſome how or other been detected, and that the Duke of *Douglas* would inſtantly make a Diſcovery; and their natural and unavoidable Conduct, if ſuch had been their Circumſtances, muſt have been, either to have compleated the Impoſture, by finding a ſecond Child immediately, and preparing a proper Number of Accomplices to ſupport them in caſe of an Enquiry;---or they muſt have inſtantly given out that the Child they had left at *Paris* was dead, and endeavoured to rid themſelves of the other as ſoon as they could, to avoid, if poſſible, the Infamy of being detected.—Inſtead of this, they continued to live with the utmoſt Eaſe at *Rheims*, and Mrs. *Hewit* never ſo much as mentioned it to Sir *John* or Lady *Jane*; and wrote back that the Birth was too well vouched to be diſbelieved.—At the Time of her writing this Anſwer to Mr *Colvil* Lady *Jane* was again with Child, which certainly was the beſt Voucher in the World of the Reality of a Delivery, which was thought improbable only on Account of the Mother's Age.

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The next Objection is, That although Lady *Jane* and Sir *John*, during their Stay at *Rheims*, uniformly mentioned that one of the Children was ſtrong and the other weak, yet they gave no particular Account either of the Perſon to whoſe Care the youngeſt Child was committed, or of the Place where he was put to Nurſe; and in Fact he was never ſeen or known as their Child till *November* 1749, when they carried off *Sanry*'s Child in the Manner already mentioned.

But every Word of this is contrary to the cleareſt Evidence.—1. The Name of the Perſon to whoſe Care the ſecond Child was left, was freely mentioned at *Rheims* to their Friends, as well as the Place where he was left at Nurſe.—2. The Accounts which they received of him from Time to Time were openly ſpoke of among their Friends. They mentioned many little Circumſtances, ſuch as his being ondoyed by the *Accoucheur* on Account of his Weakneſs, his gradual Recovery, his Teething, and other Particulars, in ſo natural a Manner, as could not have happened if he had only exiſted in Idea.—3. Sir *John* went twice from *Rheims* to *Paris* for no other Purpoſe whatever but to ſee this Child, and carried Cloaths to him on theſe Occaſions.---It is in Proof to that, Lord *Blantyre* ſaw the Child under the Care of his Nurſe, and as he was at *Paris* at the Time of Sir *John*'s being there in *October* 1748; it is highly probable he was the foreign Gentleman mentioned by Mad. *Garnier*, who came with the Father to ſee the Child nurſed by her.—4. Lady *Wigton* got an Addreſs to the Place where he was, and was requeſted to go and ſee him, and to correſpond with Lady *Jane* about him. Whether ſhe did ſo or not is now uncertain; nor is it at all material, becauſe if he had not been in their Poſſeſſion, they never could have given her an Addreſs, and requeſted her to go and ſee him.—5. This Child, when brought to *Rheims*, anſwered exactly to the Accounts which had been given of him from his Birth downwards. He was much ſmaller and more weakly than his Brother, and was the very Picture of Lady *Jane*. And laſtly, what of itſelf is ſufficient to ſhew the Abſurdity of every Objection with reſpect to this ſecond Child, is, that as it is now abſolutely certain that Sir *John* was returned to *Rheims* on or before the 13th of *November* 1749, and it is not pretended that *Sanry*'s Child was taken away till after that Time, and in Fact was not carried off till Sir *John* and his two Children were in *England*; it is abſolutely certain they muſt have had a ſecond Child at *Paris* from *July* 1748; conſequently they muſt have correſponded with *La Marre* on his Account.

Indeed the Purſuers whole Syſtem, with reſpect to this ſecond Child, is moſt abſurd and incredible; for it appears that, ſoon after the Birth of the Child, Lady *Jane* informed the Duke of *Douglas* of this Event, and had certainly all the Reaſon in the World to expect that he would take ſome Notice of it. The moſt probable Conſequence was, that he would cauſe Enquiry to be made into the Situation of his Siſter and her Children, and would give them ſuch Relief as was neceſſary in their then Circumſtances: For though he had ſtill retained his Reſentment againſt Sir *John Stewart* and Lady *Jane*, her Children were innocent, and called for Support:---Or if he had ſuſpected the Birth on Account of any of the falſe Reports and Suſpicions which were inſtilled into him, he muſt have cauſed ſome Enquiry to be made concerning of ſuch Report.---In this Caſe, What Preparation had Lady *Jane* made for any one of theſe probable Events?---The Purſuers ſay none---that ſhe had no Child---no Connection with a *La Marre*, who would ſupport her in Caſe of an Enquiry;---and conſequently that the whole Fraud would have been immediately detected upon the ſmalleſt Enquiry.—It is impoſſible, upon their own Arguments, therefore, to believe this Story unſupported by any Evidence whatever, and in Oppoſition to ſuch a Chain of poſitive and circumſtantial Proofs as has been ſtated to ſhew the Exiſtence of the youngeſt Child.

CHAP.

CHAP. V.

Of the Conduct of Sir John *and Lady* Jane, *after they came to* England.

IN a former Part of this Cafe the Defender has ſhewn who were the Authors of the Suſpicions raiſed againſt the Birth of Lady *Jane Douglas*'s Children; what Arts were employed to inſpire the Duke of *Douglas* with them, and to promote what Ends they were inculcated.

They are there ſtated to ſhew what Means the Family of *Hamilton* and its Retainers made Uſe of to acquire the Eſtate of *Douglas*; and how having got into the Duke's Settlements by ſuch diſhonourable Means, they conſidered the Juſtice which he was at an After-Period inſpired to do the Offspring of his injured Siſter, as an Injuſtice done themſelves, and an Object of Reſentment of which, without any Proſpect of poſſible Advantage, this Proceſs is the worthy Fruit.

For that Reaſon they are there brought under one Point of View, without Diſtinction of Time. But here, in arguing upon them as they relate to the Conduct of the Perſons againſt whom they are pointed, it becomes neceſſary without repeating, to diſtinguiſh the Periods when theſe Calumnies were raiſed, and when they were communicated to Lady *Jane* and Sir *John*.

In the Hoſt of Witneſſes that have been examined, and the Volumes of Letters produced, there is not the ſlighteſt Intimation that Lady *Jane* knew of the Reports to her Diſadvantage while ſhe remained in *France*, beſides the Information contained in *Colvil*'s Letter, which has been ſhewn, and was wrote in ſo vague a Manner, that it certainly never was communicated to Lady *Jane*; and the Reports were conſidered by Mr. *Colvil* as a mere Farce, were communicated as ſuch, and treated accordingly.

But this Farce furniſhes Matter for a very ſerious Reflection.---While Mr. *Archibald Stuart* was writing to Sir *John that his Conduct had been pretty uniformly for his Intereſt*, he artfully conveyed a Poiſon to the Duke's Ears in the Semblance of Wit; and the Duke was made to believe he ſaid a good Thing, when he called his Nephews his Pretenders. But a freſh Cauſe of Quarrel which aroſe between the Duke and his Siſter, independent of the Marriage and Birth, gave that Party an Opportunity of formally and ſeriouſly inculcating what had at firſt been offered as a Joke, or at leaſt received as ſuch by his Grace. P. P. 1008. c.

This was no other than the Attachment of Lady *Jane*'s Annuity by her Creditors.---By a very ſtrange Perverſion the Duke was made to look upon this as an Affront, and in great Wrath he immediately ſtopt Payment of the Annuity.---His Letter to Mr. *Stuart* to this Purpoſe is in Proceſs, and plainly indicates this ſingle Motive of Reſentment, though it was written in a Moment of Paſſion---Though it is addreſſed to a Perſon whom he entirely truſted---to a Perſon who had, by the baſeſt Falſhoods, endeavoured to perſuade him that Lady *Jane* was incapable of having Children; yet there is not the leaſt Intimation in it that the Duke ſeriouſly believed or ſuſpected her of an Impoſture; a Topic which, one would imagine, his Grace could have hardly overlooked, when he wrote on ſuch a Subject to ſuch a Friend, and at ſuch a Time: Therefore, from the total Omiſſion of it, it may be fairly preſumed, that when this Letter was wrote, 10th of *July* 1749,--- the Duke only joked when he called his Siſter's Children his Pretenders. —— 532. c.

But after this Period, the Duke being wrought up to a proper Temper of receiving any Impreſſion againſt Lady *Jane*, he was plyed with Intelligence from Time to Time as the Occaſion offered, circumſtantial Stories were poured in upon him in the Manner that has been named, and, as he could not reſiſt the Force of the Evidence on which theſe Stories were ſaid to be told, he at laſt gave Way, and believed what the Party wanted him to believe.

But at the ſame Time they took Care that nothing ſhould be done to aſcertain the Opinion they had infuſed into his Grace; though had they themſelves believed there was any Foundation for Suſpicion, their Duty led them to adviſe and to promote a Detection of the Impoſture. But they knew the Falſhood of their own Stories, and they were aware that an Enquiry would detect them; and by convincing the Duke of the Truth of Lady *Jane*'s Delivery, tend to a Reconciliation between the Brother and the Siſter.

Therefore they ſo artfully managed the Spirit of the Duke, that, till her Death, Lady *Jane* never knew explicitly what his Opinion was with reſpect to her Children; and ſurely, till her Arrival in *England*, ſhe had no Information, either of the Duke's Belief, or of the vague Reports and Opinions that ſome Perſons entertained.

Sir *John* and Lady *Jane* arrived in *London* about *Chriſtmas* 1749.---It was there they firſt heard of a Doubt having been made by ſome Perſons of Lady *Jane* not having been with Child, and which was grounded upon the Reports raiſed in *Scotland* of her Incapacity, which is now proved, and not denied to have been falſe.

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This being the only Report, many People would have neglected it altogether; but if it was thought worth while to obviate, what Method could be more effectual, than by ſtriking at the very Root of the Reaſon on which it was founded? Accordingly this was the Method Sir *John* and Lady *Jane* took: They wrote to Mad. *Tewis* at *Aix la Chapelle*, and deſired her to certify what ſhe knew concerning Lady *Jane*'s Pregnancy. Mad. *Tewis*, and two other Perſons, made a Declaration, which has been mentioned in its proper Place.---The Account is dated the 5th of *Auguſt* 1750, but it did not arrive in *England* till after Lady *Jane*'s Death.

P. P. 72. c.

D. P. 15. d.

But the Purſuers aſk, Why *La Marre* was not applied to for a Proof of the Delivery, inſtead of Mad. *Tewis* for a Proof of the Pregnancy?---To this the Defender hopes to give a ſatisfactory Anſwer: Let it only be remembered, that it was a Doubt on Report, grounded on a miſtaken Belief, that a Woman of Fifty could not have Children, which was at this Time to be oppoſed. The Suſpicions ariſing from this vulgar Error, could only be deſtroyed by ſhewing it an Error. Therefore the Application to Mrs. *Tewis* was the true and only reaſonable Method of deſtroying, not only the Report, but the Opinion on which it was founded.

And the Defender believes, upon too good Grounds, that if Lady *Jane* had applied to *La Marre* for a Certificate of his having delivered her, the Cry would have been, "Why did not ſhe "apply to Mad. *Tewis*?" A ſpecious Argument would have been made:---*La Marre* would have been repreſented as an obſcure Perſon, to whom no Faith was due: He would have been charged as an Accomplice in the Fraud; and even, as the Purſuers Caſe ſtands, it ſeems impoſſible to be true, without ſuppoſing one or two *French* Accomplices. One Objection would have been raiſed after another, and the Cry would be, "What have we to do with this blind Certificate of a Delivery? "A Proof of the Pregnancy would have been to the Purpoſe; becauſe if it was real, it muſt have been "notorious to many Witneſſes for many Months."---That the Purſuers have reaſoned in this Manner, appears from the Caſe of *Sholto*; though it is an Evidence from the Oath of Mrs. *Grig*, that Lady *Wigton* was deſired by Lady *Jane* to ſee him: Yet they overlook this, and demand, why Mr. *Johnſton* was not employed to do ſo?

Mad. *Tewis* was, by her particular Situation, the propereſt Perſon to oppoſe a Report, founded meerly on imagined Incapacity.---She was known to many People of Rank and Faſhion in *Britain*, and reſpected by all who knew her. She had a Daughter married to an *Engliſh* Gentleman of Character; and her Declaration of Circumſtances, ſo diametrically oppoſite to the Ground of the Report, behoved infallibly to quaſh it; in Concurrence with the Teſtimony of Mrs. *Hewit*, and the Servant; who being in *Britain*, every Perſon deſirous to know had an Opportunity of enquiring at.---And indeed it is unnatural to ſuppoſe, that Lady *Jane* or Sir *John* would underſtand the procuring a Certificate from *La Marre*, or from any of the Foreigners who witneſſed the Birth, as a proper Meaſure for ſuppreſſing ſuch a Report, when Mrs. *Hewit*, a Woman of undoubted Character and Credit, was at Hand.

And further, it is probable that the Application to Mad. *Tewis* was the Reſult of a temporary Indignation raſhly conceived, when ſhe was firſt informed of theſe Reports; but that ſubſiding upon her hearing no more of them, ſhe preſſed it no farther: And though the Declaration was made on the 5th of *Auguſt* 1750, it never appeared in *England* till after Lady *Jane*'s Death.—This is Evidence, that upon cooler Reflection ſhe juſtly ſlighted theſe unmeaning Reports; and it is Evidence alſo of her Innocence; for ſhe would not otherwiſe have dropped the Matter ſo, but would have conſidered Mad. *Tewis*'s Declaration as eſſentially neceſſary to the perpetual Concealment of her Crime; but more ſo, as a preſent Anſwer to the Imputations, which if ſhe had been guilty, ſhe muſt every Day have had Reaſon to dread.

In whatever Light this Step is examined, it affords no Inference of Guilt: It was the moſt obvious, and the beſt Expedient that offered, to anſwer directly the Reaſon on which the Suſpicion was founded.——If Lady *Jane* went no farther on this Occaſion, it was owing to the ſame Reaſon which prevents prudent People from running after the Slanders of News-Papers, and of tracing thoſe vague Reports which idle or malicious People propagate and every wiſe Perſon deſpiſes.

Hitherto the Suſpicions of which Lady *Jane* had been informed were too vague, too general, and too idle to be ſeriouſly followed: But at this very Period Methods were taken to inſpire the Duke with them; though with ſuch Art and Secrecy that they did not tranſpire.——Lady *Jane* plainly was miſled into a falſe Security, by the abſolute Silence of the People about her Brother, who yet called themſelves her Friends. Of this Number was *White*, and chiefly *Stuart*, who never threw off the Maſk till he had ſtripped her, late in the Year 1752, of the Deeds and Settlements mentioned in the Narrative, which ſhe had till then preſerved an ideal Reſource to her Children.

Mr. *Hamilton*, Miniſter of *Douglas*, was as culpable in this Reſpect as the others, though his Reaſon is not ſo obvious.---He was in *London* in 1751, and left it in *October* that Year; and though he was frequently with Lady *Jane*, not a Word paſſed between them on the Subject: And it is certain ſhe had no Intimation that her Brother ſuſpected her, when ſhe received the Letter from Mr. *Hamilton*'s Wife, dated the 2d of *November*; nor when ſhe anſwered it on the 23d of *December* 1751.

P. P. 329. c. Serv. p. 26.

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The first Information she received relating to the Duke's Opinion, was in a Letter from Mrs. *Carse*, dated the 14th of *May* 1752, wherein she writes: "Some Time ago I had it from a good "Hand, that a certain elevated foolish Woman, viz. *Archibald Stuart*'s Wife, as she was holding "out her Throng of Business, and having no Body to assist her, as Mr. *Stuart* had five Clerks "away with him; it was asked her, Where? She answered, To *Douglas* Castle, he having a great "Deal of Business there; and very soon, said she, that great and antient House, the Brag of the "World, will be quite extinct. How! says the Person she talked to, has not Lady *Jane* two fine "Sons? Hah! says she, they'll never be owned by his Grace; and all that's possible to be done "against her and her's will soon be put in Execution; and a great deal more to the same Pur-"pose."——This is certainly the first Notice Lady *Jane* received that her Brother disowned the Children. D.P. 882.

To this Letter Mr. *Mackercher* alludes, when he says, in his Deposition, that Sir *John*, Lady *Jane*, and Mrs. *Hewit*, resented it much, and talked of prosecuting Mr. *Stuart*, whom they considered as the Author of the Reports: And Mr. *Grindly* must also allude to this, when he depose, He heard that Suspicions were entertained by the Duke, both before Lady *Jane* went to *Scotland*, and after her Return, because there is no Atom of Evidence that ever Lady *Jane* knew of the Duke's Suspicion till this Letter; and between the 14th of *May* and the Month of *August*, when Lady *Jane* set out for *Scotland*, there was Time enough to have heard frequent Conversations on these Reports. *Grindly* was Lady *Jane*'s Landlord, and a Person useful to her. P.P. 371. F. —— 369. G.

It was no Wonder these unhappy People should be incensed at this Information; that they should talk of prosecuting *Stuart*, of getting the Children naturalized, of sending to *France*, and twenty other Projects; but it was difficult to fix on what was propereſt to be done; and they seem to have fallen upon what in human Reason was the most proper Step, namely, that Lady *Jane* should go to *Scotland*, and carry her Children along with her.

Here a natural Reflection occurs: Lady *Jane* is accused of supposing Children; she knows she is suspected of this Crime; she has no Reason to believe she has many fast Friends about her Brother; she finds his Man of Business, his Adviser, whom she had hitherto believed her Friend, turn out her Enemy; at least, second her Brother's Intentions to do every Thing possible against her and hers.——She could not go to *Scotland* in the Belief that the Duke would neither see her nor allow her to justify herself: She could not hope that her bare Assertion would efface the strong Impressions he had received. She must have laid her Account to have undergone a severe Scrutiny, and to have submitted to any Enquiry, which he judged proper to make, into the Birth of her Children.—How then was she provided for the Trial she must have expected to undergo? Why, with Innocence and Truth; certain that whatever Examination, whatever Evidence the Duke should be advised to demand, she was then in a Condition to give.

On the other hand, had she been guilty, she never would have put herself in the Duke's Way; she would not have run into a Situation which evidently tended to force a Discovery of her Crime, chiefly without the Support of the principal Contriver and Accomplice of it, her Husband.

In the Beginning of *August* Lady *Jane* set out for *Scotland* with Mrs. *Hewit*, her two Children, and *Isabel Walker*.——There is a Letter from her to Sir *John*, dated upon the Road the 8th of *August*, in which she tells him she shall not write again till she gets to *Edinburgh*: The Reason of this is explained in a subsequent Letter to Mr. now Sir *John Stewart*.—She went by Sea, contrary to her Husband's Inclination, and unknown to him. D. P. 851. E. —— 991. A.

She arrived in *Scotland* on the 18th of *August*, and lodged at Mrs. *Maitland*'s till the Middle of *October*; from thence she removed to a Place called *Hope-Park*, in the Neighbourhood of *Edinburgh*.——It is necessary to attend to this Circumstance, because the Dates will apply to clear up a Confusion which the Pursuers have artfully thrown into their Account of the different Conversations which she had with several Persons in *Scotland*. Indeed, confounding the Rumours which came to Lady *Jane*'s Ears in 1750, and the Application to Mad. *Lewis*, with the Information of the Duke's Suspicions in 1753; and the Consequences of it; has served the Pursuers much beyond their Hopes, and much beyond what they had any Reason to hope from such an Argument, had it even stood in Fact as stated by them. —— 852. B. —— 856. F.

From the Proof it appears, that Lady *Jane* had five different Conversations in *Scotland* on the Subject of her Affairs; but they are not all of equal Authority in Fact, nor of equal Weight in Argument. Two of them, *viz.* with Mr. *Loch* and Lord *Prestongrange*, were previous to her first Letter to the Duke of *Douglas*, and serious Conferences with intimate Friends, whom she consulted without Reserve, and who would never speak unadvisedly to her. One was with *Archibald Stuart*, in which there was no Mention of Children, or Suspicions; but which for that very Reason becomes material.---The two that remain, *viz.* one with Lady *Stair*, and one with Mrs. *Menzies*, were common Conversations of Women, in which nothing particular was intended.

It is evident, that Lady *Jane*, on her Arrival in *Scotland*, learnt the full Extent of the general Accusation against her.——Mr. *Loch*'s Deposition is the first Proof we have of that; and as

he was an old and faithful Friend, and a Man of Buſineſs, it is probable ſhe conſulted with him
Serv. 25. A. ſoon after her Arrival.---His Words are: " In the Year 1752, when Lady *Jane* came down to " *Scotland* with the two Boys, ſhe made bitter Complaints to the Deponent, of the injurious Re- " ports that had been ſpread, of her having bought Children, and impoſed them on the Fa- " mily, with a View to keep up her Difference with her Brother, and ſtrip her of her Rights; but " ſhe hoped very ſoon to vindicate herſelf, for ſhe was determined to go to *Douglas* herſelf with " her Children, and make Way to her Brother, and repreſent, and let him know the Fact as it " ſtood. When ſhe was converſing thus with the Deponent, he took Occaſion to aſk her Lady- " ſhip, when ſhe was delivered of the Children? where? and who were Witneſſes to the Birth? " Her Ladyſhip told the Deponent, that ſhe was delivered in the Houſe of Mad. *Le Brun*, *Sanbourg* " St. *Germain*, *Paris*, 10th of *July* 1748: That Mr. *Pierre La Marre*, a Man-Midwife, aſſiſted her at " the Birth: Mad. *Le Brun* and her Daughter were preſent; a Widow Lady who lodged in the " Houſe, and Mrs. *Hewit*."

From this we learn, that Lady *Jane*, on the very firſt Enquiry, mentioned the whole Circumſtances with Reſpect to the Birth of her Children, and was determined to make Way to her Brother, and repreſent and let him know the Fact as it ſtood; and Mr. *Loch* is the Perſon in the World from whom an Explanation of theſe Particulars ought moſt naturally to be expected; and this is the firſt and moſt natural Occaſion that Lady *Jane* had to explain herſelf.

The next Converſation is that wtih Lord *Preſtongrange*: This happened while Lady *Jane* lodged at Mrs. *Maitland*'s, that is, before the Middle of *October* 1752. As Lady *Jane* and Lord *Preſtongrange* are both dead, the Fact ſtands on the Teſtimony of *Iſabel Walker*. But the Teſtimony of *Iſabel Walker*, though attacked with Prodigies of Art on every Article, remains unſhaken in all.
D. P. 370. C. She, when examined in 1765, ſays, " That when Lady *Jane* lodged at Mrs. *Maitland*'s, the " Lord *Preſtongrange*, then Lord-Advocate, came to make a Viſit to Lady *Jane*: That when his " Lordſhip came in, ſhe, the Deponent, was dreſſing Lady *Jane* in one Room, and his Lord- " ſhip was put into the next Room: That Lady *Jane* went into the Room where My Lord was: " That the Rooms were ſo ſituated, that the Deponent heard the Converſation; and heard Lady " *Jane* ſay to My Lord, That ſince ſhe came to *Scotland*, ſhe underſtood her Honour was called " in Queſtion with Reſpect to the Birth of her Children, but that God knew her Innocence, and " that the Children were her's: That ſhe did not doubt but the Man-Midwife who delivered her " was ſtill alive; and that, if his Lordſhip thought it neceſſary, ſhe would bring any Proof that " ſhould be thought proper: But that his Lordſhip anſwered, *She needed give herſelf no Uneaſineſs* " *as to that Matter; for, that as her Ladyſhip and Mr.* Stewart *acknowledged the Children, there was* " *no further Proof neceſſary; and that if any Perſon challenged their Birth, they behoved to prove* " *that they were not Lady* Jane's *Children.*" *Iſabel Walker* afterwards confirmed this Account in 1767.

The Teſtimony of this only living Witneſs to the Fact, is confirmed by ſtrong and probable Circumſtances. 1ſt. The Probability that Lady *Jane*, in the Situation of her Affairs, would aſk Counſel from one ſo able to give it. 2dly. So far as the general Tenor of the Subject goes, Mr. *Loch* and *Iſabel Walker*'s Depoſitions ſupport each other. 3dly. There is a Letter in Proceſs from Lady *Jane* to Sir *John Stewart*, dated the 18th of *November* 1752, which plainly alludes to
—— 862. E. this Converſation: She writes, " The Lord Advocate is one of my beſt Friends; I am under " great Obligations to him, which I am fond of, as I look upon him as a very valuable Man, as " well as a Perſon of Weight and greatly eſteemed." To whom then could Lady *Jane* apply for Advice other but an eminent Lawyer, whom ſhe looked upon as her beſt Friend? And what Obligation had ſhe to Lord *Preſtongrange*, other than the Eaſe he gave her Mind on ſo perplexing a Caſe? 4thly The Advice itſelf is, above all, Evidence that it was given. It has been ſaid, that Lord *Preſtongrange* was a Man of more Underſtanding than to give ſuch an Advice. But the Defender will be allowed to ſay, he was a Man of too much Underſtanding to give any other: It is ſound Law and ſound Reaſon. And, indeed, the ſame Advice was given upon another Occa-
P. P. 325. D. ſion by Lord *Shewalton*, one of the Judges of the Court of Seſſion. If a Challenge had been brought at that Period, while the Fact was recent, and a clear Proof of the Birth might have been got, perhaps, Lord *Preſtongrange* might have adviſed ſuch Proof; more from Expediency than Neceſſity. But as the Caſe ſtood entirely upon unauthoriſed Slanders, it could never enter into the Head of a Lawyer but of common Abilities, to think of adviſing Proofs which then were totally unneceſſary, and, in Caſe of a Queſtion, would have been of no Uſe. Lord *Preſtongrange* conſidered the Slanders only as a Subject of Uneaſineſs to Lady *Jane*; and, to quiet her Mind, he told her how the Law ſtood. And it is incredible that *Iſabel Walker* could of herſelf have hit upon this true State of the Queſtion, which ſo many, who ought to have known better, have miſtaken. 5thly. It is evident, from the Conduct of Lady *Jane*, that this ſenſible Advice was given her.

In 1750, when the looſe Reports came firſt to her Ears, ſhe was uneaſy, and ſent for Certificates from Mad. *Tewis*, *&c.* but her Uneaſineſs ſubſided as ſhe heard no more of them, and ſhe did

did not purſue that Plan. On the Receit of Mrs. *Carſe*'s Letter, in *May* 1752, which pointed theſe Reports to a particular Perſon, ſhe grew angry, talked of proſecuting that Perſon, and of naturalizing her Children: In fine, ſhe hurried down to *Scotland* to examine the true State of the Charge: Underſtanding it more particularly, ſhe entered into an Explanation with a Man of Buſineſs, her Friend, and took the Advice of a very able and eminent Counſel. Hitherto ſhe had fluctuated; uncertain what Steps to take, or what Meaſures to purſue: But on Lord *Preſtongrange*'s Advice, ſhe totally changed her Language and Conduct; ſhe deſpiſed the Slanders, made no Reply to them, except in one particular Inſtance, which ſhall be afterwards explained.

After all this, it is impoſſible to doubt, that the Converſation, as depoſed to by *Walker*, is true: It is certain the Advice was worthy of Lord *Preſtongrange*'s good Senſe and Abilities; and it is certain Lady *Jane* followed it, and acted right in doing ſo.

But if ſhe had been guilty of the Crime laid to her Charge, Nothing of this Kind would have happened. She would not have expoſed herſelf to any Explanations with Men of Buſineſs; ſhe would not have offered a Proof when ſhe had none to give; ſhe would not have aſked the Advice of a Man of Lord *Preſtongrange*'s Eminence, without being aware of the Obligation ſhe laid herſelf under to follow it; and ſhe could not tell what it might be, if his Lordſhip had thought a Proof neceſſary, as the Purſuers are confident he ought to have done.---She muſt have entered immediately into a Detail of that Proof which ſhe previouſly offered.

Lady *Jane*'s third Converſation was with Mr. *Archibald Stuart*, on the 27th of *October*, 1752; and then it was that ſhe gave up to him the Deeds ſo often mentioned.---He, on his Part, promiſed to uſe his warmeſt Endeavours with the Duke, to perſuade him to reſtore the Bond for 30000 Marks, and the 300*l.* Annuity.---No Motive obliged Lady *Jane* to this Sacrifice, but a Deſire to do every Thing the Duke demanded; and no Motive obliged Mr. *Stuart* to make theſe Promiſes, but a Deſire to impoſe on Lady *Jane*: And that ſame Deſire prevented him from ſaying a Word of what paſſed in *Douglas*-Caſtle about her Children; though, had he been either a faithful Servant to the Duke, or a Friend, as he profeſſed, to Lady *Jane* and Sir *John Stewart*, it was his Duty not only to have informed her of the Duke's Suſpicions, but alſo to have adviſed her to proper Meaſures either to remove them, or to detect the Impoſture. Serv. 41. P.

This Gentleman was the Duke's Man of Buſineſs; he pretended to be convinced of the Impoſture himſelf; he convinces the Duke; he knows of the Duke's Conviction.---One would think that, independent of a Regard to Juſtice, the Duty he owed to the Intereſt of the Family he befriended, would have prompted him to put the Fact upon ſome probable Footing of Evidence. He knew where to apply, and where to direct his Enquiries; and, unleſs he were infinitely more ſcrupulous than his Son, the ſame Means were open to him, the ſame Secrecy, and in Circumſtances of much leſs Diſcredit.---Yet he not only does nothing to bring the Matter to Light, but he ſtudiouſly prevents every Explanation, and ſhuts every Door againſt it.---He has an Opportunity, and a favourable one, of ſifting the Perſon he ſuppoſes guilty, and he does not ſo much as bring the Subject into Converſation. For all this the Defender can aſſign a Reaſon, but it belongs to the Purſuers to aſſign an honeſt one; which if they do, the Concluſion of Guilt inferred from Lady *Jane* and Sir *John*'s Conduct will come from them with a very bad Grace.

The two Converſations that remain to be mentioned are not of the Nature of the former. They are the Diſcourſes of Women, and told, in ſo far as they make for the Purſuers Argument, with ſtrange Circumſtances of loquacious Suſpicion. One is with Lady *Stair*, and the other with Mrs. *Menzies*, a Shop-keeper's Widow in *Edinburgh*. That of Lady *Stair* is explained under another Head; and the only Queſtion is, Whether the Teſtimony of one Witneſs, very exceptionable, to that Converſation, ſhall be believed preferable to that of two, very unexceptionable, who heard Lady *Stair* repeat, on a very ſerious Occaſion, what paſſed between her and Lady *Jane*.---That with Mrs. *Menzies* has alſo been ſpoke to in another Place; and it ſhall only here be obſerved upon it, that if it merits any Degree of Credit, it is a ſufficient Anſwer, that it happened after the Advice given by Lord Advocate, who, as to the Expediency or Propriety of taking Proofs, was certainly a better Judge than a Female Shop-keeper.

Thus the Conduct of Lady *Jane*, upon the Suſpicions raiſed againſt her, was uniform, natural, and conſiſtent with the various Shapes in which they were conveyed to her.---The temporary Alarms which looſe Reports gave her, ſubſided with theſe Reports, as ſhe did not even preſs the Evidence, which it is certain ſhe might have had, that of Mad. *Tewis*, and which, had ſhe been guilty of an Impoſture, would have been moſt material to her. The ſenſible Advice ſhe received quieted her Mind. The Suſpicions were ſuch as no prudent and innocent Perſon could be authoriſed, much leſs obliged, to contradict; but which, had they been as ſtrongly enforced as the Purſuers would have it, a guilty Perſon would have thought herſelf obliged, and would have endeavoured to contradict. And therefore her Conduct in this Particular, inſtead of inferring Guilt, is the ſtrongeſt Mark of Innocence.

But however in Prudence and in Innocence ſhe might have ſlighted the idle Converſation of Women, and anſwered the Slanders of the Ignorant with the Words Lord *Preſtongrange* put into her Mouth, yet ſhe could not expect to ſatisfy the Duke her Brother in the ſame Manner.---She did not expect it; for ſhe wrote to him only to be heard, and offering all the Satisfaction he could deſire upon every Charge againſt her, and offering to ſubmit to the ſevereſt Puniſhments, if ſhe did not convince him of her Innocence.---This is not the Language of Guilt, and of Guilt that is nothing but a bare Aſſertion, to offer to a Judge deeply prejudiced againſt it. What Evidence ſhe would have offered, had ſhe been admitted to her Brother's Preſence, may be eaſily imagined: Indeed it could have been no other than a Detail of Perſons, Places, and Dates, with a Conſent, perhaps Requeſt, that he would make an Enquiry into the Truth of her Tale.---Without this it is impoſſible to believe ſhe ever could endeavour to force herſelf into the Preſence of her irritated Judge, on whom her Hopes of every Kind chiefly depended. And yet ſhe endeavoured to do this without Friends, without Aſſiſtance, or any Circumſtance of Support, other than her own Innocence, and a Conſciouſneſs of its appearing when her Brother ſhould make ſuch Enquiries, as he, or thoſe he ſhould adviſe, ſhould think proper.

By whoſe Fault ſhe was not admitted to a Trial has been already ſtated; and it cannot be enough wondered at, that thoſe who believed her guilty ſhould have refuſed to convict her, when ſhe threw herſelf upon their Power. One would be almoſt tempted to imagine, that the Party had already planned this very Action, and huddled up Things till Time ſhould throw a Cloud over what then was clear, and capable of the fulleſt Proof.

When Lady *Jane* was at *London* in Summer 1753, Mrs. *Hewit* received a Letter from Mr. *Loch*, informing her of the Story of Count *Douglas*'s Letter to the Duke of *Douglas*, as told him by *Archibald Stuart*, mentioning the Children to be bought out of an Hoſpital.---The Purſuers have made a ſtrange Attempt to fix, as they call it, this Letter upon Sir *John Stuart* and Lady *Jane*; that is, to make out that they themſelves had invented the Story, in order to have the Credit of detecting it. But Mr. *Loch*'s Letter, and Lady *Stair*'s Converſation with the Duke of *Douglas* in 1759, plainly fix it on *Archibald Stuart* and Major *Cochran*. It belongs to them to trace it farther; and, if they were not the Authors of it, to tell from whom they had it.---It would, indeed, be a ſtrange Fetch in Lady *Jane*, or Sir *John*, to invent this Story, which could ſerve no earthly Purpoſe.

The Chevalier *Douglas* muſt have been in a Miſtake, and muſt have taken Mr. *Loch*'s Letter, which, no Doubt, was ſhewn and tranſlated to him for the Letter which it mentioned, and the Miſtake is very natural.

But, ſay the Purſuers, Why did Lady *Jane* ſhew ſo much Anxiety to have this particular Story contradicted, and yet neglect all the other flying Reports? The Anſwer is plain, and ariſes from the Queſtion, Becauſe Nobody can or will trace flying Reports; but a particular Story, cloathed with Circumſtance of Place and Perſon, may be traced to its Source, and its Falſhood detected: And if Lady *Jane* had been informed of the Stories told the Duke, and laid in the Name of Lady *Stair*, and *Margaret Kerr*, of which Notice has formerly been taken, it is probable, that ſhe would have defeated the Falſity of them in the ſame Manner, and which would not have been counteracting the Advice given by Lord Advocate.

CHAP. VI.

Of Lady Jane *and Sir* John's *Affection to their Children, and the Purſuers Argument upon it.*

IN the whole Courſe of this Cauſe the Purſuers have attempted to unhinge every Principle which has hitherto been ſuppoſed to lead the Actions of Mankind; and have tried to introduce a Pyrrhoniſm in Morality, which tends to overturn the very Foundations of Society. The Daringneſs with which they charge direct Perjury on Numbers of unexceptionable Witneſſes, muſt deſtroy private Faith and Evidence. The ſophiſtical Eaſe with which they invent Palliatives for Sir *John* and Lady *Jane* to the Crime they are ſuppoſed to have committed, confounds the Limits of Right and Wrong. Their wanton Abuſe of Language and of Senſe, in the Conſtruction they put on the Exerciſe of parental Affection, breaks through every Tie of Relation; and their Comments on the Solemnity and Weight of Death-bed Declarations, every Bond of Religion: To this may be added, the Diſgrace they have brought on public Juſtice by the Uſe they have attempted to make of it.

But the Defender believes, there is Something real in all theſe Principles; and that, however Crimes, too black to mention, are often committed, yet no Perſon, nor Number of Perſons, was ever yet ſo deep in Wickedneſs, as to efface intirely the Ideas of Juſtice and Religion, which come

come into the World and grow with them.---But if the Purſuers Argument is juſt, Lady *Jane Douglas*, Sir *John Stewart*, and Mrs. *Hewit*, muſt have been made of other Mold; and after having lived to a pretty advanced Age, without being ſuſpected of any Crime, all at once muſt have committed a deep one; ſupported it by a Train of the moſt dreadful Diſſimulation, and Diſſimulation of Feelings, which two of them would find it difficult to diſſemble; and at laſt had conſummated it by the moſt dreadful Act of Impiety, and on an Occaſion which ſtartles the moſt hardened Criminals.

It is impoſſible to make any Progreſs in the Evidence of this Cauſe, without receiving a thorough Conviction of the tender, the genuine, and motherly Affection of Lady *Jane Douglas* to her Children ---That of Sir *John* is of a different Kind, but only in ſo far as the Difference of Sexes and Characters go:---To mention Particulars, would be to go through the whole Proof; for there is not a Witneſs who had Acceſs to know, that does not ſwear to it in Terms that would loſe by any Alteration which could be made on them.

But it does not reſt on the Evidence of Witneſſes alone; a Series of Letters which have been recovered by Accident from one *Beadle*, in whoſe Houſe Sir *John* lodged, ſeven Years after Sir *John*'s leaving the Lodgings, and could not have been intended to impoſe on the World, though worthy of the whole World's Peruſal, ſpeak with more Force to prove that unfortunate Lady's truly maternal Affection and her general Character, than a thouſand Witneſſes. They were written in Circumſtances of deep and poignant Diſtreſs, in Part, at leaſt, brought on her by theſe very Children ſhe is ſaid to have impoſed on her Family. It might be naturally ſuppoſed, if the Charge were true, that Reaſon, Juſtice, and Religion, not lulled aſleep by Proſperity, but rouſed by Misfortune, would at one Time or other, have aſſerted their Rights, and drawn, if not Remorſe of the Crime, at leaſt ſome Complaint of its Conſequences, ſo different from what the Accomplice, to whom ſhe writes, had flattered her to expect.—But inſtead of this, the Letters are filled with the Reverſe.---*Naive* Pictures of Family Diſtreſs; Reſources which may put Vanity to the Bluſh, and draw Tears from Compaſſion;---preſent Want, and Dread of that to come, brightened at Times by imaginary Hopes of better Fortune, yet revealing the Source of that Hope to be beyond this tranſitory World; maternal Affection endearing, while it encreaſes the Load of Penury, form the Aſſemblage which theſe Letters exhibit.---And he muſt be loſt to the Feelings of Humanity, as well as the Principles of Reaſon, who reads them, and doubts of the Truths they contain.

To anſwer this, the Purſuers ſuppoſe that Affection may be feigned; nay, that it is neceſſary in ſuch Caſes to blind the World.---This is preciſely one of the chief Reaſons why Crimes of this Nature are of difficult Perpetration, and of Courſe are not to be preſumed. Feigning Affection where it is not, through a Courſe of Life, is impoſſible:---Some Time or other Nature will recur, and appear undiſguiſed.---Whatever Face a Criminal may put on in public, in the unguarded Moments of private and unreſerved Correſpondence, where every Moment the Object of his Crime is brought into Queſtion; and when at the ſame Time he ſeverely feels Diſtreſſes, the immediate Conſequence of his Crime; it is not to be thought but ſome Expreſſions of Impatience will eſcape him, which Criticiſm may lay hold of:---But in the Courſe of Lady *Jane*'s Life, from the Hour of her Delivery till that of her Death, there is not a Circumſtance in her Conduct to belie the true maternal Affection ſhe bore theſe Children.

The Purſuers deny this, and ſay, ſhe ſuffered *Sholto* to be carried to Nurſe, and *Archibald* to be ſome Days out of her Sight, with People ſhe did not know.—The probable Reaſon of Lady *Jane*'s not having ſeen *Sholto* while in a State of Weakneſs, which made his Preſervation doubted of, has been explained, and proved to proceed from that very Tenderneſs which the Purſuers contradict; and that of ſending *Archibald* to Nurſe *Favre*'s Houſe is the ſame: They muſt either have parted with the Nurſe, or yielded to this; and with real parental Tenderneſs, they preferred the Child's Good to the Pleaſure of having him with them.---But this Argument proves that no Woman loves her Child who lets it out of her Sight: Which is a very great Abſurdity; for it is often done by the fondeſt Parents, in the moſt eſtabliſhed Situations.

But, ſay the Purſuers, Affection may grow. Nurſes love their Charges, and adoptive Parents the Children they have adopted. Beſides, Lady *Jane* was bound by the Ties of Humanity to love theſe Children who ſhe had deprived of the Care of thoſe whom Nature allotted to rear them.---It is not a little abſurd to account for Lady *Jane*'s Affection for theſe Children by the Ties of Humanity, when the Purſuers in the ſame Breath, accuſe her of breaking through them all.---The Ties of Humanity bind no Perſon to thoſe for whom they have committed a Crime. On the contrary, Experience proves, that even the innocent Object of a Crime is hated by the Criminal.---And to ſuppoſe that Lady *Jane* was a Perſon to reaſon on the moral Obligation ſhe lay under to love the Children whom for her own Intereſt ſhe deprived of their Parents, and to act uniformly in Conſequence, is falling into two very great Miſtakes.---The

firſt:

firſt is, Natural Affection is the Reſult of Reaſon: And, 2dly, That a Perſon guilty of a dreadful Crime, which ſhe conſummates by a hundred more, regulates her Conduct, and bends her Heart to the pureſt Dictates of Morality.

As to the Argument from adoptive Parents and Nurſes, it is believed, that when Adoption was lawful, People did not love Children becauſe they adopted them, but adopted them becauſe they loved them.---For Nurſes, their Affection is certainly the neareſt to that of a Mother; and perhaps it would not be proper to examine too cloſely the phyſical Cauſes of either.---Lady *Jane* did not nurſe theſe Children, and yet ſhe loved them as a Mother.

The Defender is aſhamed to follow the Purſuers through their whole Argument; and yet he is under a Neceſſity of doing it, becauſe on Arguments of this Kind, the Judgment which has deprived him of his State and Birthright only proceeds.

The Diſtreſs which this unfortunate Lady felt on the Death of her youngeſt Son, and which is depoſed to in an affecting Manner by Mrs *Macrabbie*, has not eſcaped Inſult.---The Exclamations of a Mother on ſo ſevere a Blow, are treated as Affectation, and ſo groſs, that Lady *Jane* muſt be too good an Actreſs to fall into it.---Therefore the Witneſs who ſwears to the particular Expreſſions of Grief ſhe uttered, muſt have miſrepreſented them: In other Words, to ſupport the Character of theatrical Merit, which the Purſuers have been pleaſed to beſtow on Lady *Jane*, the Witneſs is neceſſarily perjured.---An Accuſation too inſignificant to prove an Obſtacle to the Purſuers hopeful Syſtem.

Once more the Purſuers bring their great Battle-Horſe to the Charge, and demand why, if Lady *Jane* really loved her Children, ſhe did not bring Evidence of their being hers?---This Argument is ſqueezed into every Point of the Cauſe, and twiſted into every Shape. It has been already anſwered; and the Appellant will here only beſtow a Word upon it.

It is difficult to ſay what is the propereſt Manner of Acting, before the Event points out the Inconveniency of acting in one Manner; and even Ignorance can reaſon after the Fact better than Wiſdom can before.---Had Lady *Jane Douglas* and Sir *John Stewart* known what was to happen, they would, no doubt, have endeavoured to prevent it; but in the Situation of Things, as they ſaw them, they could not foreſee the Attempt that has been made.---While they had any Hopes that the Children might eventually be better by the Duke of *Douglas*'s Succeſſion, they knew not that they were ſuſpected of a Crime; and when they began to learn of the falſe Reports that circulated, the Duke of *Douglas*, inſtead of bettering their Condition, had abruptly withdrawn Lady *Jane*'s Penſion, refuſed to ſee her, and gave her every Mark of an irreconcileable Enmity: So that by this Time, all Hopes of Fortune were vaniſhed; and neither ſhe nor her Huſband could well ſuppoſe, that any one would take the Trouble to rob their Children of an unavailing Name.-- Indeed, had that Name been attacked, it might have been worth While to defend it; but it was not worth the While, nor could have been vindicated with common Prudence, to have conſidered the looſe Reports which a few deſigning Perſons vainly endeavoured to propagate, as a formal Attack againſt which a Defence was neceſſary.---Theſe Reports were heard by many; and but ſcarcely believed by one. The general Voice ſtood ſtrongly for Truth, and drowned the feeble Whiſper of Slander.---Lady *Jane* was received wherever ſhe came, not as a Criminal who had brought Shame on an illuſtrious Family, but as a Lady as richly diſtinguiſhed in Merit and Endowments, as ill provided with the Gifts of Fortune.---Her Children too, inſtead of being treated as Impoſtors, ſhared the Attention which their Mother drew on her.---There is a Proof of this in a Letter wrote from *Scotland*, to her Huſband, of this Date, the 18th of *November* 1752.---By ſuch Circumſtances ſhe was led to deſpiſe the unembodied Suſpicions which ſome have affected to entertain; and knowing her own Innocence, ſhe had great Reaſon to think the World was convinced of it.---She offered Proofs; and ſhe was told by good Authority, that they were ſuperfluous.---She offered herſelf to Trial, and ſhe was refuſed. She knew, if attacked, how to defend herſelf; and all ſhe can be blamed for is, that ſhe did not foreſee the Chain of Events which has made it worth the While of Malice to attack her Reputation, and rendered leſs clear the Evidence ſhe was in a Condition to have brought.

But it is alſo very hard to ſay, in what Manner ſhe could have brought that Evidence ſo as to make it avail in any After-Queſtion.——It could not be in a judicial Form, unleſs ſhe had hit on the Invention of a *Tournelle* Proceſs, in which, by accuſing a *Quidam Ecoſſois* of a Crime, no Matter what, ſhe might have had the Witneſſes to her Delivery examined, and their Evidence laid up for the Occaſion.——But ſhe had not ſuch able Adviſers as the Purſuers; and it is much doubted, if, at this Day, that, or any other Evidence ſhe had brought, would have been accepted by them.

CHAP.

CHAP. VII.

Of the Death of Lady Jane Douglas, *Sir* John Stewart, *and Mrs.* Hewit.

THE Purſuers make every Thing eaſy in the Whole of their Argument, and chiefly in the prefumptive Part of it, only by aſſuming a trifling Poſition, to wit, That Sir *John Stewart* and Lady *Jane* were guilty of the Crime of Suppoſition. On this equitable Hypotheſis they account for their Conduct by their Guilt, and for their Guilt by their Conduct. This is what is called Arguing in a Circle ; and a very ingenious Method it is.

In no Part of their Caſe have they purſued this Method with more apparent Self-Complacency than in the Criticiſms they have made on the Argument ariſing to the Defender from the Manner in which his Parents and Mrs. *Hewit* died.

Lady *Jane* had left her Children in *Scotland* when ſhe went to *London* in *April* 1753, as has been ſaid ; the Death of the youngeſt, as it affected her with a mortal Sorrow, ſo it encreaſed her Anxiety for the eldeſt. She returned to *Scotland* about the Middle of *Auguſt*, where ſhe languiſhed till *November*, and died, though in Penury, with the Sentiments of a Heroine, and the Piety of a Chriſtian.

Her Behaviour at this aweful Period of a Life crowded with Misfortune is in Evidence, from the Depoſitions of Mr. *Loch*, Mrs. *Hewit*, Mrs. *Greig*, *Iſabel Walker*, and *Jannet Andrew*. They are unanimous to the general Tenor of her affectionate and motherly Behaviour to the Defender ; and each depoſes to different Particulars, the natural Effects of that which each remarked as the Occaſion preſented. Thus Mr. *Loch* depoſes to the Anxiety ſhe teſtified to ſecure to her Son a few Trinkets, all that Fortune had left in her Power, Memorials of maternal Affection, not Goods of Fortune. Mrs. *Greig* depoſes to the Hopes and Fears ſhe had about his future Welfare, her Contempt of the Stories that had been raiſed to her Prejudice, and a ſolemn Aſſeveration in the Sight of God, that he was her Son. Mrs. *Hewit* ſays, that about four Hours before ſhe died, ſhe ordered her Son *Archibald* to be brought to her, when ſhe laid her Hand upon his Head, and ſaid, "God bleſs you, my Child, God make you good, and an honeſt Man, "for Riches I deſpiſe : Take a Sword in your Hand, and you may one Day be as great a Hero "as ſome of your Predeceſſors." *Iſabel Walker* depoſes, "that the Day before ſhe died ſhe expreſſed "ſome Anxiety to ſee her Brother, and ſaid, that her Friends all thought ſhe was leaving the "Burden of her Child upon them, and therefore would not come to ſee her ; but that ſhe com-"mitted her Child to the Providence of God, who ſhe truſted would take Care of him." *Jannet Andrew* ſays, "that about eleven Days before her Death, ſhe went to Church and took the Sacra-"ment, and never after went abroad : That every Night for ſome Time preceding her Death, "Lady *Jane* took Leave of her Son *Archibald*, after taking the Sacrament, in a very affectionate "Manner, and as a dying Woman ; and that for many Nights before her Death, ſhe was ſo ill, "ſhe did not expect to ſee the Morning. She alſo depoſes, that Lady *Jane* died on the 22d of "*November*, about eleven in the Morning."

To this very plain and very convincing Evidence of Lady *Jane*'s Behaviour in her laſt Moments, the Purſuers have raiſed a Number of Cavils, fitter to be diſcuſſed in a School of St. *Ignace*, than a *Britiſh* Court of Juſtice. It is indeed ſomewhat ſingular, that when the Tenets of theſe dangerous Enemies of Morality, ſtand exploded and deteſted by all Nations, they ſhould be taken up by Lawyers in this. Such are the Objections to Mrs. *Greig*'s Evidence : 1ſt. That ſhe is a ſingle Witneſs : 2dly. That ſhe deſerves no Credit, becauſe ſhe believed firmly the Children to be Lady *Jane*'s : 3dly. That her Anſwer to Mrs. *Greig*, aſking if ſhe had taken no Step to prove the Defender really her Son, was not that of a Mother, in ſo far as it left his Fate to ſtand upon the legal Preſumption : And, 4thly. That the ſolemn Appeal ſhe made to God of the Child's being hers, was an impious Equivocation.

The firſt Objection deſerves no Anſwer. The ſecond anſwers itſelf. The third has been often anſwered ; and it may be added here, that in the Terms of Lady *Jane*'s Situation, however on other Occaſions it might be preſſed---however Lady *Jane* may be ſuppoſed to have erred in not getting Evidence to the Birth---however ſenſible ſhe may have been when on her Death-Bed, that ſhe had erred---it was then too late to recall the paſt, or to think of Proofs, or indeed to make any other Anſwer than ſhe did : And the Purſuers Argument, which in every other Place concludes nothing, becomes in this Place abſurd.---The fourth Objection is more ſerious, and inſtead of Contempt raiſes Indignation.—Thoſe who can wantonly accuſe a dying Perſon of calling the God, into whoſe Preſence ſhe is about to ruſh, to atteſt a Falſehood, and ſcreen herſelf under a mean Equivocation, may fairly be ſuſpected of any Crime ; for the Heart muſt have felt the Argument ere the Head could have formed it.

From the Evidence above ſtated, it is impoſſible to deny that Lady *Jane* treated the Defender with the Affection of a Mother in the laſt Stage of her Life.---The Purſuers admit it with a bad Grace; but they ſay that ſhe never took any Step to ſhew him to be her Son, nor ſaid any Thing explicit on the Subject.---It were to be wiſhed that the Purſuers had pointed out what Step other than ſhe took, Lady *Jane* could have taken on a ſick Bed. Not a Relation about her, ſcarcely ſupplied with the Neceſſaries of Life, what could a dying Woman do but atteſt her Truth, by an Appeal to the God of Truth?---how ſhew the Mother, but by Prayers for the Welfare of her Offſpring? and what Explications give to her Servants, who were already well informed of every Circumſtance of her Story?---Had indeed any of her Relations come to viſit her, ſuch might have been intitled to aſk her Queſtions, which, if ſhe had not anſwered in a ſatisfactory Manner, might have afforded ſome Preſumption; but ſure it can be none that ſhe did not tell her Story to Mrs. *Hewit* and *Iſabel Walker*, who knew it before.

It appears that Lady *Jane* complained of the Neglect of her Relations, which ſhe would not have done had ſhe feared an Explanation, becauſe then was the Time when they had a Right to expect it: And indeed if ſhe took the Sacrament as a dying Woman--palliated this Act of Religion to herſelf by ſuch rotten Evaſions as the Purſuers dare to put in her Heart---evaſively trifled with God, when juſt to appear before him---acted and thought, and ſpoke as a Mother to the Defender---took a ſolemn Leave of him for many Nights---with every other Circumſtance depoſed to by the Witneſſes---if ſhe did all this, and yet was guilty, ſhe muſt have been a very zealous Volunteer of Iniquity, for ſhe could be under no Neceſſity to act any Part of this Farce.---She had none about her who durſt have importuned her. Mrs. *Hewit*, her Accomplice, would have taken Care her laſt Moments ſhould not be diſturbed: And her own Intereſt would have rendered her watchful, leſt a Confeſſion of Lady *Jane* had turned to her own Reproach. In that Caſe, her laſt Moments would have paſſed in Silence without Suſpicion; and if ſhe was ſuch a Caſuiſt to believe ſhe could deceive her God by an unworthy Evaſion, ſhe could not fail to know, or to be perſuaded, that it would tend much more to the Alleviation and Excuſe of her Crime, if ſhe could leave the World without adding to it new Falſhoods, and profaning the moſt ſolemn Acts of Religion, at a Time when the Impoſſibility of Repentance renders every Crime more dreadful.---Therefore Lady *Jane*'s Behaviour at this Time, ſpontaneous as it was, muſt be conſidered by all who have not ſhaken off the great Ties of Nature and Religion, as a convincing Proof of her Innocence.

Sir *John Stewart*, the Defender's other Parent, ſurvived Lady *Jane*. His Conduct and paternal Affection alſo was manifeſted invariably, from the Day of his Children's Birth to the Hour of his own Death.--The ſame tender Concern--the ſame delicate Attachment--the ſame Anxiety that characterized Lady *Jane*'s Affection to her Children, is not to be found in Sir *John*'s Conduct.---But, from every Circumſtance of the Proof, as well by Witneſſes as Letters, it is equally ſtrong.---When he attained the Poſſeſſion of his paternal Eſtate, by his elder Brother's Death, his firſt Act of Adminiſtration was to make a Proviſion for the Defender; and the laſt Act of his Life was a formal Declaration, making a ſolemn Appeal to God, that the Defender and his Brother were his Sons by Lady *Jane Douglas*.---He had juſt then recovered from a Fit of the Gout, which had like to have carried him off. And ſix or ſeven Days after he had another, which killed him in his ſeventy-ſixth Year.

The Purſuers endeavour to get over the Force of this by a Diſtinction in their uſual Way: They ſay, in order to give ſuch Declaration the Weight which Reaſon and Law lay on the Aſſertion of a dying Man, two Things are neceſſary. 1. That the Perſon knew himſelf to be dying: And, 2. That he has a ſufficient Senſe of Religion on his Mind to aſcertain his ſpeaking the Truth, even in the View of Death.

On the firſt of theſe Heads the Purſuers have criticiſed the Depoſitions of many Witneſſes, who have ſworn to Sir *John*'s bad State of Health; and that he believed himſelf in a very dangerous Way.---Indeed the Declaration proceeds on that Recital; and all the Purſuers have been able to make out is, that Sir *John* was in good Spirits when he ſigned the Declaration; and that he did not care to hear of Death.---This is the Opinion of a Witneſs, who knowing, as he ſays, Sir *John* did not care to hear of Death, try'd to perſuade him he was not ſo ill as he imagined. But Sir *John* did not take the Bait; he was too ſenſible of the Failure of Nature, and his approaching Diſſolution.---However that be, the Purſuers argue that Sir *John*, who did not care to hear of Death, was in good Spirits at that Time, and therefore that he could not know himſelf to be dying.

But it appears from the ſame Evidence, that Sir *John* was not blind to his Situation—he was ſeventy-ſix Years of Age—he had had ſeveral very ſevere Fits of the Gout, each of which might have carried him off; and it is plain he expected the next would finiſh him.---If his Declaration ſhall not be conſidered as that of a dying Man, ſuch can never be expected from a Perſon who

who dies of the Gout, becauſe their Diſtemper leaves no Interval between perfect Capacity and utter Inability.---Its Paroxyſms are ſudden and violent; and when over, by the Irritation it occaſions, leaves a Flow of animal Spirits: So that Sir *John*'s Spirits were a Proof of his Diſtemper, not of his Health. And a Man of ſeventy-ſix Years, who has narrowly eſcaped Death by a Fit of the Gout, to which he has been long ſubject, may be fairly ſuppoſed to have a juſter Notion of the Approaches of Death, than he who lingers by a gradual Decay; for he has the trueſt Senſe of Danger who has juſt eſcaped it.

On the ſecond Head the Purſuers are audacious enough to ſay, that Sir *John* had never given Reaſon to believe that he had any ſuch Senſe of Religion as to aſcertain his telling the Truth; theſe are their Words.---If the Defender could ſtoop to refute ſuch a horrid Aſſertion, he would aſk what Reaſon Sir *John* had ever given to make it believed he had no Senſe of Religion, and how the Purſuers come to think that their groundleſs Accuſations of a Crime amount to Convictions? Sir *John Stewart* was never ſuſpected of any Thing unbecoming an honeſt Man, or a Man of Honour, ſave the Crime he is now accuſed of; and the Defender may yet be allowed to inſiſt, that it is equally falſe and unbecoming to treat him in this Manner.---What are the Purſuers, that they ſhould take ſuch unwarrantable Liberties with the Living and the Dead?—becauſe Lady *Jane Douglas* appears to have had ſtrong Sentiments of Piety, ſhe muſt be charged with the Crime of Hypocriſy, of dallying with the moſt ſolemn Myſteries of Religion, and trifling with God;---and Sir *John Stewart*, becauſe he had not the ſame pious Turn, muſt be a Man without any Senſe of Religion at all.---Such Aſſertions ought neither to be made or ſuffered.

In the ſame Strain the Purſuers inſiſt, that the Declaration of Sir *John Stewart* ought to have no Weight, becauſe it is of a Man convicted of Falſhoods and of Forgery.---The Falſhood of this Accuſation hath already been proved; but it is not what a Man has done in his Life, that takes from the Credit due to his Declaration on a Death-bed; the Weight which is laid on a Man's dying Words, ariſes from the Senſe he is ſuppoſed to have, and which all Men have, of the immediate Danger, and dreadful Conſequences, of telling a Lie in that awful Moment.

Nor of more Importance is their Objection, that Sir *John*'s Declaration is too general.---It is preciſe and poſitive to the Fact, and it was not then a Time to enter into Particulars, to explain which, after ſuch a Lapſe, Sir *John*'s Memory was ſtill leſs able to ſerve him, than when his Declaration was inſidiouſly taken.---But it is ſomewhat ſtrange to impeach the Credit of the Declaration, becauſe Sir *John* did not make a Confeſſion in it of Crimes which he never committed---of Forgery for having copied in *French* the Letters of *La Marre*, to cover to a Wife his own Negligence in loſing the Originals--- and of Falſhood becauſe he miſtook the Period, or confounded the Hiſtory of his Acquaintance with *La Marre*, who delivered Lady *Jane*.

Mrs. *Hewit* alſo, who had invariably perſiſted through Life in the Teſtimony ſhe gave to the Defender's real Birth, a very little before her Death, and in a Situation which left her no Hopes to recover, wrote a Letter to a Clergyman, in which ſhe ſolemnly affirms the Account ſhe had given of the Appellant's Birth upon Oath to be true, under the Corrections of what ſhe believed to be a Miſtake in a Date, but which in Fact was none. But the Purſuers lay hold of this, and ſay that it deſtroys the Credit due to a Perſon affirming a Matter of Fact in the View of Death.

The Defender on the other Hand is convinced that it adds great Weight to her Credit, becauſe the ſcrupulous Delicacy of Conſcience which is alarmed in theſe awful Moments with the Notion of having only erred, is incompatible with the Purſuers Hypotheſis, that the ſame Perſon perſiſted through Life, and went to Death with a Lie in her Mouth.---It is of no Conſequence that the ſuppoſed Error ſtands refuted by other Evidence, or even by that of the Perſon who wiſhes it corrected; which is the Caſe of Mrs *Hewit*.---Age, Infirmity and Diſeaſe, ſuch as ſhe laboured under, never fail to impair the Memory, and throw a Cloud over diſtant Tranſactions; and in a Matter of Date, which is the Caſe here, cannot be depended on.---But in Proportion as the Faculties abate, Conſcience, and the Dread of Futurity, grows ſtrong.---Every Thing appalls the Soul ready to launch into Eternity; and from hence it is that what a Perſon affirms in that Situation, all Men receive with Reſpect and Belief.---From hence alſo a dying Woman, whoſe Conſcience reproaches her with an Error of Date relating to a Fact, cannot be ſuppoſed capable of perſiſting to Death in the Fact itſelf, unleſs it were true.

Lady *Jane Douglas*, Sir *John Stewart*, and Mrs. *Hewit*, all died in Circumſtances that gave much Authority to their lateſt Actions and Words.---None of them hurried off, nor in that equivocal Situation which till the very laſt affords as much Hope of living as Fear of dying.---They felt the regular Approaches of Diſſolution, and muſt have properly conceived its Importance.---They were attended by thoſe whoſe Duty it is to awake the Repentance ſo eſſentially neceſſary to all Men; and if a Regard to Truth did not prompt them to the Declarations they made, no earthly Conſideration can be ſuppoſed to have induced them to perſiſt in and publiſh a Lie.---They died at different Periods in the Retirement of their Families, uninfluenced by publick Shame or private Importunity.---All of them might have paſſed their laſt Moments in Silence, and let the Matter reſt

where it ſtood, without incurring any Cenſure, unleſs the Force of Truth had drawn from their dying Lips that laſt Teſtimony which Nature enabled them to give of the Defender's true Filiation.

Therefore it is to no Purpoſe that the Purſuers attempt to weaken theſe dying Declarations, by the Inſtance of Criminals, who ſometimes go to Death, denying the Crimes of which they are convicted; for there is a great Difference between a Perſon dying in full Health and Spirits, and one gradually decaying under the Hand of Diſeaſe:---Whoever dies in public, dies what the World calls hardy, that is, with a greater Senſe of what he leaves than what awaits him;---but it is not ſo in the Horrors of a ſick Bed. --And even in the few Inſtances that can be given of Criminals who have died denying the Crimes of which they were convicted, the Force of their Words has often ballanced, in the Opinion of Mankind, the Evidence on which they were condemned.---Such Authority doth Nature give to the Affirmation of a dying Man.---But if it were proper to apply in this Caſe, what happens rarely even amongſt the moſt abandoned Criminals, the Defender would aſk, on what Occaſion three Perſons convicted of one Crime, and dying in ſeparate Places and at different Times, all perſiſted to aſſert their Innocence to the laſt Moment of their Lives.

The Purſuers ſay, that the Behaviour and lateſt Actions of Sir *John*, Lady *Jane*, and Mrs. *Hewit*, was a neceſſary Conſequence of their Crime; and the Defender ſays, that it was not only a neceſſary Conſequence of their Innocence, but a ſtrong Proof of it. The Whole of the Purſuers Arguments ſuppoſes a Crime committed by them, and accounts for their Conduct upon that Suppoſition; while, at the ſame Time, it is from their Conduct alone the Crime is pretended to be proved. Perhaps it would have been better had the Defender left this whole Argument of Conduct to the Contempt it deſerves, and which it cannot fail to excite in the Breaſt of every judicious Perſon: But as it is the Purſuers Triumph and that Part of the Cauſe upon which it appears, by the beſt Authority, the Purſuers chiefly rely, it became neceſſary to explain it at great Length. If he has not been able to account for every Particular in the Conduct of his Parents, the Fault lies in the Nature of Things; but he will venture to aſſert, it is better explained upon the natural and legal Preſumption of Innocence, than on the Suppoſition of a Crime.

15 July 1767. Upon the whole State of this Caſe the Court of Seſſion pronounced their Interlocutor the 15th of *July* 1767, "*Suſtaining the Reaſons of Reduction, and Decerning and Declaring accordingly.*"

Interlocutor of the Court of Seſſion, appealed from. The Defender has appealed to your Lordſhips from this Interlocutor, and moſt humbly hopes it will be Reverſed or Varied; and that ſuch *further Relief* will be given the Appellant as ſhall appear adequate to the Circumſtances of this extraordinary Caſe; for the following, among other

REASONS.

I. The Defender in his Service to his Uncle the late Duke of *Douglas*, brought a Proof of his Poſſeſſion of the State of Filiation to Sir *John Stewart* and Lady *Jane Douglas*, in every Article wherein ſuch Poſſeſſion can be thought to conſiſt; and by every Species of Evidence which Lawyers have thought appoſite.

This *Treatment* was proved by many Witneſſes who had ſeen him often under thoſe Circumſtances.

His *Nomination* by his Parents was proved by many Witneſſes who had heard it, by many Original Letters, and by more ſolemn Acts of Baptiſm, Deeds, and Wills.

His Reception as the Son of Lady *Jane Douglas* by the World, was alſo proved by all the Witneſſes.

Beſides all this it was proved, that he was commonly *Habite* and *Reputs* the Son of Lady *Jane*.

The Poſſeſſion of his State, thus proved, inferred his Title by Preſumption of Law, and eſtabliſhed his *Proprietatem et Dominium* in the State he poſſeſſed.

Upon this Ground he had a Right to ſtand till the Purſuers could deſtroy his Ground.

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This was to be done, either by contradicting the Evidence as to the Fact of Poſſeſſion, or (admitting that Fact) by alleging that it was originally acquired, and has ſtill been maintained by Fraud and Impoſture.

As to the firſt—Contradicting the Evidence; the Fact of *Treatment* is uncontroverted.—The Fact of *Nomination*, as already ſtated, is uncontroverted —The Fact of his *Reception* among the Friends and Acquaintance of his Parents, and in the World, is uncontroverted.—The common *Habite* and *Repute*, as reſulting from all theſe, is uncontroverted; except that the Purſuers ſay other Rumours went about among particular People, which the Defender admits; but has proved theſe Rumours falſe, and traced them Home to the Purſuers.

He inſiſts upon the Rule of Law, that if any Act of Poſſeſſion of State, not equivocal, is proved, it gives the Party in whoſe Favour it is proved, *the Poſſeſſion of State*, and puts the Adverſary to impeach it.—But he alſo inſiſts,—notwithſtanding the Suggeſtion of Rumours, the Fruit of their own Falſhood—that every poſſible Act of Poſſeſſion of State (not equivocal) is proved, and he ought thereupon to be adjudged in the *Poſſeſſion of State*, as he has in Fact enjoyed it.

The Conſequence of which is, the Purſuers are driven to their ſecond Propoſition, which admits, that ſuch Poſſeſſion of State is true, in Fact; but that it was acquired and maintained by Fraud.—On this Head, the Defender claims the Benefit of two Preſumptions of Law; the firſt is in Favour of his Parents Innocence; the ſecond, in Favour of his own long and unqueſtioned Poſſeſſion.—And if Nothing more were alleged in the Caſe, he preſumes to hope, that his Poſſeſſion would be ſufficient Proof of his Title; and conſequently, upon that Bottom, that the Verdict given in the Service was right.

But, in order to demonſtrate in one View what Kind of Burden lies upon the Purſuers, he further inſiſts, that the Fact of his Birth is proved (even abſtracted from the Poſſeſſion of his State) by two poſitive Witneſſes, ſupported by a great Multitude of concurrent Circumſtances, which would be ſufficient, even without this poſitive Evidence, to prove the Fact of his Birth, *multo magis*, in Concurrence with them.

He inſiſts alſo, that the Fact of his Mother's Pregnancy is fully eſtabliſhed, and adds irrefragable Support to his direct and immediate Title—the Fact of the Birth.—It is a Sort of Proof which the Purſuers cannot contradict, and have not avoided, nor attempted in any ſerious Sort to avoid:—Which is ſaid, preſuming on this Truth, that the Evidence all runs one Way to the Fact of his Mother's Pregnancy, to her Capacity of Bearing, and her Habit of Conceiving, down to a Period ſubſequent to the Time of the Birth.

To theſe he adds many other Articles, remoter indeed, but very important to ſupport his Title:—The acknowledged Character of Integrity of both his Parents—the abſolutely blameleſs Reputation of one—the peculiar Tenderneſs impoſſible to be feigned, or to be thought ſo, by any ſenſible Mind—the extraordinary Reſemblance which has been obſerved between the Defender and his Brother, and between the youngeſt Child and his Mother; and many other Particulars too long to be enumerated, which occur in this Hiſtory.

Hereupon the Defender reſts upon three Preſumptions of general Importance, being no leſs eſſential to the Intereſt of all the reſt of Mankind, than his own.

1ſt. The general Preſumption in Favour of Innocence, without which it would be ſtript of legal Protection, from the Difficulty of proving the Negative of Guilt, when Guilt is affirmed.

2dly. The general Presumption in Favour of Possession, without which Property would be precarious, if the Possessor may be called upon to prove his Title, though it never has been impeached.

3dly. The general Presumption in Favour of the Integrity of Witnesses, without which Justice could not be administered at all.

It is evident therefore, as well from the Authority of Lawyers, as from the Principles of Reason, sound Policy, and Expediency, that the Pursuers cannot prevail in this Action, without proving, by direct and indisputable Evidence, that the Defender is not the Son of Lady *Jane Douglas*, but of some other Woman.

II. Instead of that direct and conclusive Evidence, which it is incumbent on the Pursuers to produce, in Support of their first positive Allegation, That Lady *Jane* was incapable of conceiving, and was traced at Places, and in a Condition which exclude the Possibility of her Pregnancy, and consequently of her Delivery, on the 10th of *July* 1748, they have passed over her Incapacity without offering any Evidence whatever; and the Sum of their whole Evidence, upon the Article of her Pregnancy, is that of a few Witnesses, some of whom had been previously examined in the *Tournelle*, and most of them had not formerly known her; who say they did not observe her pregnant at the Times they saw her, which it appears was in a Crowd of Company at *Aix*, or on her Journey, when she was wrapped up and covered with a long Cloak.—This negative Evidence has been fully stated and examined in a former Part of this Case.

Part III. Book II. p. 63, &c.

The Pursuers Evidence on this Article, has produced on the Part of the Defender, a Proof of Lady *Jane*'s Capacity of bearing Children, by many unexceptionable Witnesses; who depose particularly to the known Marks and Symptoms of Capacity, and to an actual Miscarriage at *Rheims* in *December* 1748.

Her Capacity of bearing Children being proved, renders her Pregnancy a very natural and probable Event, and, withal, makes it inconceivable that she should entertain the Purpose of stealing other Children to disappoint her probable, or, if they will, her *possible* Issue.

Her actual Pregnancy is proved by above Thirty Witnesses, most of whom lived in the greatest Intimacy with her, had Opportunities of seeing her at all Hours, and could not be deceived. From the Evidence on this Head, as stated in the preceding Case, it appears, that the first Symptoms of her Pregnancy were observed so early as in the Beginning of *November* 1747, by Mad. *Tewis*, Mrs. *Hewit*, *Isabel Walker*, and *Effy Caw*, who lived in Family with her; and the gradual Progress of it, from this Time, while she remained at *Aix*, in her Journey to *Rheims*, and until her Departure from thence, is proved by many Witnesses of unimpeached Characters, who speak particularly to the several Marks and Symptoms; which, when taken *collectively*, leave no Room to doubt a real Pregnancy.

P. 68, & seq.

The Fact of Pregnancy being established by full, clear, and unimpeached Evidence, induces the Delivery so necessarily, that it is impossible to disprove it by Inference or by circumstantial Conjectures.

The Delivery is not only proved by the positive Testimony of Sir *John Stewart* and Mrs. *Hewit*, but by a Variety of Facts and Circumstances appearing in Evidence; which prove the Accounts, uniformly given of the Delivery, were founded in Truth, and correct in the most material Circumstances. These have been stated in the former Part of this

this Caſe, and the Purſuers Objections to this Part of the Evidence have been fully canvaſſed and refuted.

Inſtead of proving the next direct Article of Charge, That the Defender and his Brother *Sholto* are the Children of *Mignon* and *Sanry*, the Evidence ſtands, even in the Purſuers own Argument, upon no better Ground than that this *might be ſo*.—Upon examining this Evidence, the Whole will be found to be a ſcurrilous Imputation, maintained neither by direct, nor by probable Teſtimony. III.

The *Enlevement* of *Mignon*'s Child was firſt introduced by the *Monitoire* diſperſed through *France* and *Lorrain*, ſtating every Fact the Purſuers were pleaſed to alledge, as already inconteſtibly proved, and calling forth Witneſſes by Eccleſiaſtical Admonitions, and Menaces of the moſt terrifying Nature, to appear and give Evidence of theſe Facts.

It appears from the Evidence ſtated in the preceding Caſe, That the Corruption and Perjury of *Mignon* and his Wife, the two principal Witneſſes to this Article, have been proved by inconteſtible Evidence. P. 123.

The Witneſſes ſpeak to the Event as happening either too ſoon or too late, to ſuffer any Application of it to Sir *John Stewart*; and the real Date of the *Enlevement* is fixed by *Mignon*'s own Account, who ſwears, That the firſt Maſs ſhe cauſed ſay for him was at the St. *Eſprit* before giving her Child, *the Day on which ſhe gave him*, to know what God would inſpire her to do.—And it appears, that this very Maſs was ſaid the 11th of *March* 1749.—The Perſons who carried away the Child, as deſcribed by the Witneſſes, were totally different from Sir *John*, Lady *Jane*, and Mrs. *Hewit*.—Sir *John* was much taller than the Man they deſcribed; and there cannot be a wider Difference imagined, than between Lady *Jane*, or Mrs. *Hewit*, and the Woman.—Her Age (being 34 at moſt) her Size, Plight, and Fulneſs of Body being utterly the Reverſe of Lady *Jane*'s Habit.—Her Fairneſs and Youth as different as poſſible from Mrs. *Hewit*'s.—The Deſcription of *Mignon*'s Child is in the ſame Manner as different as can be imagined, from the Deſcription which Nurſe *Mangin* and others give of Mr. *Douglas*.—The firſt had blue Eyes, fair Complexion, fair Eye-brows and Hair—The other, large black Eyes, brown Eye-brows and Complexion.—The Purſuers have been at great Trouble to argue, and have endeavoured to prove, that the Features of Children, and particularly the Colour of the Eyes, frequently alter. But unfortunately their Witneſſes ſpeak poſitively the other Way, and ſay they never ſaw or heard of an Inſtance of ſo total a Change, in ſo ſhort a Time, as the Witneſſes ſpeak to in this Caſe.

With Reſpect to the *Enlevement* of *Sanry*'s Child, it appears by the Evidence formerly ſtated, That after trying ſeveral ineffectual Means, Lord *Morton* ſupplied Sir *John* and Lady *Jane* with 350 *l.* by a Bill he ſent her on Mr. *Waters* at *Paris*, dated the 15th of *October* 1749, which was received at *Rheims* the laſt Day of that Month, and was indorſed on the 2d of *November* to Mr. *Aubert* for Value then paid to Sir *John Stewart*.—That on the 3d of *November* they ſet out for *Paris*, to bring Home their youngeſt Son *Sholto*. On the 13th of *November* they returned with their Child to *Rheims*, and on the 29th of *November*, it is admitted, they ſet out for *England*.—The Date of their ſetting out for *Paris* on the 3d, and of their Return to *Rheims* on the 30th of *November* being eſtabliſhed, the whole Proof brought by the Purſuers, and their ſtrained Arguments to fix the *Enlevement* at a Period conſiſtent with Sir *John* and Lady *Jane*'s Motions, will appear of no Weight.—Their firſt Syſtem was, That Sir *John Stewart* and Lady *Jane* ſet out from *Rheims* the 15th or 16th of *November*:—That they arrived at *Renaud*'s in the *Rue Francbourg* on the 19th:—That on the 21ſt they went to the *Croix de Fer*, and P. 133, &c.

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on *Saturday* the 29th of *November* they ſet out for *Rheims*, where they arrived the 1ſt or 2d of *December*.—But upon Evidence being brought that Colonel *Stewart* of *Ardſhiel* was the Perſon who lodged at *Renaud*'s, and of Sir *John* and Lady *Jane*'s Departure for *England* on the 29th of *November*, this Syſtem was abandoned.—After ſhifting the Ground for ſome Time, the Purſuers laſt Allegation was, That Sir *John* and Lady *Jane* ſet out from *Rheims* the 11th or 12th:—Arrived at *Paris* the 14th or 15th:—Employed three Days in ſearching for a Child:—Two or three Days more in tranſacting the Matter; and that they returned to *Rheims* on the 25th of *November*, and ſet out three Days after for *England*. Tho it appears in Evidence, that the Perſon named *Duverné* who ſtole the Child, reſided at the *Croix de Fer*, at a Time inconſiſtent with the Purſuers Syſtem; and none of their Witneſſes have gone ſo far as to confine their Stay at *Rheims* to ſo ſhort a Time as three Days: And it is in Proof that this *Enlevement* happened the Week before the 10th of *January* 1750.—The Deſcription of the Perſons concerned in the *Enlevement*, and of the Child, with other Particulars inſiſted on by the Purſuers, have been fully ſtated and explained in the preceding Part of this Caſe.—The Defender need ſcarcely add the Improbability of Sir *John*'s and Lady *Jane*'s ſtealing a Child in their then Circumſtances.—They had one Child which, if it was ſtolen, as the Purſuers ſuppoſe, they muſt have heartily wiſhed to get rid of.—The Duke of *Douglas* had ſtopt their ſmall Penſion, and left them without Reſource.—Lord *Morton*, their Friend in Diſtreſs, lent them but juſt what was ſufficient to pay their Debts at *Rheims*, and defray the Expence of their Journey to *England*.—To ſteal a ſuperfluous Child in ſuch Circumſtances, is beyond even what the Views imputed to them required, and is in itſelf incredible.

IV. The Purſuers Allegation, that Lady *Jane* was at *Godefroi*'s and *Michel*'s in ſuch Circumſtances as inferred the Impoſſibility of her Delivery, ſtands unſupported by any direct or probable Evidence.

P. 97. It has been fully ſtated in the preceding Caſe, that the Syſtem firſt adopted on the falſe Inſpection of *Michel*'s Books, ſupported by *Duruiſſeau*'s Perjury, and guarded from Detection by the *Tournelle*, has been long abandoned.—The whole Evidence now inſiſted on to prove the Impoſſibility of the Delivery on the 10th of *July*, reſts on two blank Articles in what the Inn-keeper *Godefroi* calls his Books, and which he and his Wife, without any Memory whatever of the Perſons, or any Cauſe or Knowledge whatever but theſe Books, have taken upon them to apply to Sir *John Stewart* and Lady *Jane Douglas*.—The intrinſic Objections to the Books deſtroy every Circumſtance of Credibility, or even of the Poſſibility of ſuch Application.—The whole Streſs of the Evidence lies on the fundamental Propoſition that the Books contain every Gueſt that reſorted to the Houſe without Exception; but it is demonſtrated, both from the Evidence of the Thing, and the Teſtimony of *Godefroi* and his Wife, that the Reverſe is ſignally and notoriouſly true.—In *May* 1765, *Godefroi* and his Wife ſaid, that one of their Books contained all their Gueſts without Exception; but as it fell notoriouſly ſhort of the Number of Gueſts which actually reſorted to their Houſe, they produced another Book of the ſame Kind in *July* 1765, and then ſaid, that both Books together contained the Scores of every Gueſt without Exception.—This would deſtroy their Evidence of itſelf; but both Books together are ſtill notoriouſly ſhort of the Number of Gueſts.—They, in Fact, prove Nothing, being only a Parcel of unconnected Memoranda, of current Scores to help the Memory at the Time. Thus the Baſis of their Evidence is an Article of Memory, which is admitted to have been falſe in *May*, and is proved to have been falſe in *July*; yet on this Evidence the Purſuers attempt to eſtabliſh a Propoſition which is otherwiſe glaringly improbable.—In theſe obnoxious Circumſtances, it

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comes into Court with the additional Impeachment of the Purſuers own Judgment, who, for Years, during the Courſe of the Proceedings, rejected it as inadmiſſible; till, from the Evidence of the *Michels*, the other Syſtem, ſo foully inſtructed, came to be deſtroyed. It is likewiſe diſproved by the Evidence of the *Michels*, which ſupports and confirms the direct Proof of Pregnancy, by a direct Proof of Reconvaleſcence, which muſt neceſſarily imply an intermediate Delivery.

All the Witneſſes at *Michel*'s expreſly ſwear, that Lady *Jane*, upon her Arrival there, was pale, and had a ſickly Air.—*Blainville* and *Breval* particularly ſay, that ſhe had the Look and Appearance of one newly brought to-bed—That they knew ſhe had been recently delivered of Twins, and had been driven from her former Lodging by Bugs—That ſhe took warm Drinks for Diet—That ſhe kept her Apartments remarkably cloſe in *July*—and recovered gradually during her Stay in the Houſe—It is proved that ſhe beſtowed Preſents, and uſed every poſſible Means to perſuade Nurſe *Favre* and her Huſband, who were Eye-Witneſſes of her whole Conduct at *Michel*'s, to go with them to *Rheims*; ſo that it is impoſſible to believe that ſhe acted any Part inconſiſtent with the Idea ſhe gave out, and which was univerſally known at *Rheims*. Yet the Purſuers attempt to prove the Delivery counterfeited, by Articles inconſiſtent with the Pretence of it. p. 147.

V. The Purſuers poſitive Denial of the Exiſtence of *La Marre* and *Le Brun*, reſolves into Critical Objections againſt the Connection which the Perſons of that Name, who are proved to have exiſted, held with the Defender's Parents.—The Allegation of Non-Exiſtence, however broadly taken, could not affect the Defender's Poſſeſſion of State directly: Therefore, the Objections, which apply only to their Connection with Sir *John* and Lady *Jane*, are ſtill more remote from a direct Impeachment of State; but they are all effectually removed by the Evidence which the Defender has been able to bring, not only of their Exiſtence, but of their Union with the Fact of his Birth.—The Diſſemblance between the *La Marre* deſcribed by Sir *John Stewart* in his Declaration, and him whoſe Exiſtence is proved, could not, in its utmoſt Latitude, get over the unalterable Reſemblance and Connection which reſults from the Proof between *La Marre* and Lady *Jane*'s Delivery; but when the Circumſtances of that Declaration are taken into the Scale, the Errors of Memory natural to all Men, and moſt natural to the Age and Character of Sir *John*, and his State of Health at the Time, the Difference immediately evaniſhes, and no Objection ariſes, becauſe, in retracing a remote Idea, he connected a Circumſtance belonging to one Perſon, with a Perſon to whom it did not belong, which is a Caſe ſo common, that the only Inference to be drawn from it, impeaches the Condition of Mankind in General, but not the Credit of Particulars. Neither would the Letters from *La Marre*, about which ſo much Noiſe has been made, ſuppoſing them forged in the moſt criminal Senſe of the Term, otherwiſe affect the Defender's State; than as an Objection to one of the Witneſſes to the Fact of his Birth: But the Hiſtory of theſe Letters has been ſtated, and the Imputations ariſing from their Appearance in the Cauſe has been effectually removed.—The Exiſtence of *La Marre*, his Connection with the Defender's Birth, and his Care and Direction of *Sholto* being proved, a Correſpondence by Letters naturally reſults from theſe Circumſtances; and the actual Correſpondence is proved likewiſe by poſitive Evidence; inſomuch that before the Purſuers can raiſe any Argument on *La Marre*'s Letters, they muſt break through the Teſtimony of every Witneſs, on every Point of the Cauſe; for they ſupport each other mutually by neceſſary Inference.

The

VI. The Purſuers alledge, that *Garnier* was not the Nurſe of the Defender's Brother *Sholto*, but have not attempted to bring any Evidence upon this Article.

It appears, That it was in Conſequence of the Accounts given by Meſſ. *Menager* and *Gilles*, that the firſt Enquiries were made for the Nurſe of *Sholto*. The Manner in which ſhe was diſcovered, and the Evidence which ſhe and her Huſband and their Neighbour *Boucault* have given, has been already fully ſtated, and ſupports the uniform Accounts given by Sir *John*, Lady *Jane*, and Mrs. *Hewit*, that Lady *Jane* was actually delivered by *La Marre*; that the youngeſt Child *Sholto* was put out to Nurſe at *Menilmontant*, in the Neighbourhood of *Paris*; that he was frequently viſited by Sir *John* during the Time he remained with this Nurſe, and was brought to *Rheims* in *November* 1749.

P. 173.

The Purſuers Comments upon this Evidence relate to the Deſcription given by Sir *John Stewart* of *Garnier*'s Place of Abode, and the preciſe Time the Child remained with the Nurſe, which have been fully explained in the preceding Part of the Caſe.

VII. The Attack made on the Conduct of the Defender's Parents, has obliged him to explain it upon ſuch probable Motives as naturally infer their Innocence; which muſt be concluſive againſt an Argument which aſſumes for its Baſis their Guilt. The *Poſſibilities* which run through the Purſuers Reaſoning on this Head are anſwered by *Probabilities:* And although it is abſurd to demand, and impoſſible to anſwer, Why an Action, in itſelf indifferent, was done in one Way rather than another? yet the Defender hopes that he hath left no Part of his Parents Conduct unaccounted for. The Preſumption for Innocence ſupports the Account he hath given; and the Purſuers have perverted all Principles of Common Senſe, in order to wreſt a natural Behaviour to an unnatural Preſumption of Guilt. The Fallacy of their Argument has forced them to deſtroy under one Head what they had reared under another; to confound Things and Terms in their Nature moſt oppoſite; and to proceed in a perpetual Rotation, inferring a Crime from Circumſtances of Conduct, and explaining that Conduct by the aſſumed Principle of a Crime committed. In other Words, they were guilty, therefore they acted ſo;—they acted ſo, therefore they were guilty. The trifling Objections raiſed to the Manner in which the Defender's Parents acted down to their Arrival in *Paris*, have been ſtated and refuted in the preceding Part of this Caſe. The Circumſtances of their Fortune account for the Retirement, not Myſtery, in which they lived there: And the genuine, unvaried, parental Tenderneſs with which they treated the Defender from the Hour of his Birth till that ſolemn Conſummation which their dying Behaviour gave to his State of Filiation, is more than a ſufficient Anſwer to the Criticiſms, not Arguments, of the Purſuers. The temporary Motives which ariſe from particular Characters and particular Situations are too undetermined to become the Foundation of a legal Deciſion. But if the Defender's Caſe even ſtood on this Iſſue, he would be warranted, from the moſt undoubted Evidence, to affirm, that the Conduct of his Parents was fair, natural, and unaffected, if they are ſuppoſed innocent; but forced, unnatural, and affected, upon the Purſuers unjuſt Aſſumption, that they were guilty of an Impoſture.

JA. MONTGOMERY.
FL^R. NORTON.

mr labe L depre solle derodes entroar gue entres
le 5 auril
Monsieus Lefore dela morniere entré le 6me auril

mr labes gordon derodes entres le huit auril

mr nairaux pour aserre debars urobe entrés
le 12 avril
mr de nojan capitinne de cavallerij aux resgiment
dela ville Lille entres le 17 auril 1748

les mais sieur motra de choman en basr gney entrés
le 20 auril et leur domeistique

mr labée pleignolle entré le 24 auril 1748
mr Berrod et mr de fouvatt Davignon pour affair de plus bre
entré le 28 daurel 1748 le 20 de desembre 1749 eumechan

monsieus Labé colain entré le premier maij 1748 venint
de Cessij enbvij pour a faire

Madamme Le baux entré le 7 maij dpuis dij
pour a faire 1748

monsieur du memj quntioni du poittous
pour a faire entré le 9 maij 1748
monsieur Dumeiny Gentilhomme du poitoux
entré le 9 maij 1748

Ytem. May 1748.
Sorieville
~~Du 13 may mademoiselle Sorieville et entrés~~
~~dans [illegible] de Joe rmagne entré~~
Du 13 mademoiselle Blainville de pavvonne pour a faire
mr Beaufils garlons chirurgien de montargie entré le 18 may 1748
Du vingt huit e May Milsse eum guarnier fait Monsr fary de Rossé en
arivé a Vitré Anjou

mr de la fernays de roan pour a ser entrés le premier
juin Entré le
mr Marchand de montargie pour affaire entré
le 10 de juin 1748

Monsieur rodis Jacobe debaionnait
entré le 4 Juin 1748 pour a faire

Juin
juin 9 de normandie
Monsieur Dupoinier Chirugien Entré le 24 Juin 1748

mademoisielle bury deblaye pour aserre entrés le 29
juin 1748

Fournel Soudiacre du Diocese d'Evreux
en normandie

madame belliet mademoisielle safille dechalaus deux
pour aserre entrés le deuxe juillet

mademoisielle carpantier duarne pour aserre entrés le 5
juillet

Lavrac
Monsieur Lavrac et son domestique entré le 10
Julliett 1748 a donné trois Livre il etait d'angers
parraphe suivant de l'information du 18 Jan. 1762 Mirgel
Mr Sturath Ecossois et Sa famille Entré le 8e juillet 1748
Monsieur Lauvris bourgois de pvvis entré le
31 Julliett 1748

Mademoisselle movignion Sain guinionne
pour a faire entré le 2 Daou 1748

madamme bouzfar illandaisse pour a faire
entré le deux Daous 1748

Monsieur Soupait capitain de vesseaux entré
le 3 daout

Monsieur chemait de Lallorett de vennaux
pour a faire entré le 10 aous

Monsieur Monniez de Lion pour a faire entrez le 10 aous 17[illegible]

madamme de la pussadre de toullouis pour a faire
entré le 9 aous

Monsieur Labé poussait de tuvarn entré Le 12 aous

London June 2d 1753

I had the favour of yours of 22d ultimo, and had acknowlegd it sooner, but that I was desird at the same time yours to one nelly with its Strongs Contents:
as to our obligations to you Sir, as this melancholy occasion as well as on many others, Lady Jane and I have the justest sense of, and hope soon to be able to give you Convincing proofs of it, though it will not be easy to make suitable Returns, to favors done in such a way, as must ever more than doobles the obligation however great in its Self: all we can offer at present is hearty thanks for all, particularly this last kind demonstration of your friendships, and regard; the will of heaven must be submitted to, happy is it, to have such a friend, when so unexpected and terrible a shock happens; of all past dear Lady Jane has met with, no one ever affected, and must for so trouble, as the death of this dear infant, But I hope time, with her Christian patience to bear, will bring her soon to bear more easily, what can not be helpd; and indeed the account you give (so obligingly) of the health and behaviour of dear little Archie on the occasion Should help much towards giving her relief in her present distress of mind, which so much may affect her health; What you write of good mr Stewarts conversation with your friend, on the villanous story, have been invented, at Hamilton, and spread at Douglas, to put on the D with wrong notions of his Letter is very probable; But my having heard some thing of the villany and ill-will of the villanous, the interested villain, and his corrupt adherents to wish to Rob Lady Jane of honour, truth, and character, makes me fear the forgery will Surprize, as I know them capable of but every thing that is bad, So that it can but contribute to augment their unworthy Idols:
I even think it likely their attempting to forge the Letter may have been known to the Duke, by coming from General Count Douglas, as he had a Cousin here the Chevalier Douglas, at this time, who has been acquainted with what is said in the County name

who is desired, and no doubt will write to Lady Jane, and
enclose a Letter for Duke of D— in hers, shewing the forgery
of the pretended letter; this kind providence has perhaps ~~has~~ made
use of, to Cut his Grace Lee not a villains he has about him,
who from interested views, to aggrandize a family, whose interest
is, and ever has been directly opposit to that of his
noble family, which has been Robed by the other formerly of
valuable papers, jewels, Pictures &c &c, and now are attempting
(by making his grace believe the grossest falsehood) to dishonnor
his Sister in attacking the honnor, truth, and vertue and
character of his only Sister, knowing that by a total misunderstan=
=ding with her Brother, she is deprived of any opportunity of detecting
their machinations villany to the Duke, and proveing her own
& her own honnor vertue, truth, and tender affection, and Regard to
her only Brother;
She is sure, by the Duke refusing to see her, but that will
come about in good good time, when her honnor, and truth will
triumph over villany, and scandalous aspersion, to the Confusion
of the Rascally authors of it.
I beg you may see archie as often as your affairs will allows
as Macleans is but a little way from town, and at your leisure
hours favour me with a few lines, which will add to the many
favours we already lye under. I am for
with great Esteem
your much obliged frend
and most obedient humble Servant
Jo: Stewart

P. Cameron Esqr.

Mr William Loch

writer in Edinburgh

Monsieur

A mon Retour a Londre jay reçeu le paquet
que vous avez eu la bonté de m'envoyer
avec votre obligeante Letter, elle est partie
pour votre Coustine par le post d'aujourdhui
qui sera charmé d'avoir des vos nouvelles
aussi bien que des Lettres de monsieur le Comte Dugras
cette pacquet Suffira pour Confutioner ceux
qui ont aussé prendre le nome de ce monsieur
pour ecrire leurs Calomnies, nous vous Somes
tres oblige, aussi bien qu'a monsieur le Comte
pour nous avoir donnez des preuves, pour montrer
ces infames, dans leurs proper jour
je vous prie monsieur de vouloir faire a
monsieur Le Comte mes tres humble Complimentz
de Remerimentz, et d'accepter les mesme.

Jay l'honeur monsieur
d'etre avec Estime
votre tres obligé
et tres humble Serviteur
Jo: Lewis

a monsieur votre frere, et a tous nos amis
certainement votre Coustine vous embrasse bien tendrement

Je suis bien aise que vous
ayez eu le petit chien joly
vous aurez une chienne
la quelle doit etre encore
plus Belle, Selon la beauté de Race
acceptez monsieur mes Remerimentz
pour la perception mes Complimentz

G. Cameron Sculp.

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